TRANSCRIPT OF RECORD

United States Court Of Appeals

TENTH CIRCUIT

No. 5585

W. E. MURPHY, Director of Alcoholic Beverage Control; JOHN ANDERSON, JR., Attorney General of the State of Kansas; ARDEN RHYNE, Sheriff of Leavenworth County, Kansas; and JAMES E. FUSSELL, County Attorney of Leavenworth County, Kansas, Appellants,

vs.

W. B. LOVE, an individual doing business as THE LOVE TRANSFER COMPANY, Weston, Missouri, Appellee.

Appeal From The United States District Court
For The District Of Kansas

Filed March 4, 1957.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Pleas And Proceedings before the Honorable Delmas C. Hill, Judge of the United States District Court for the District of Kansas, presiding in the following entitled cause:

W. B. LOVE, an individual doing business as The Love Transfer Company, Weston, Missouri, Petitioner,

vs.

CHARLES W. PRATT (W. E. Murphy substituted), Director of Alcoholic Beverage Control; Harold R. Fatzer (John Anderson, Jr. substituted) Attorney General of the State of Kansas; Arden Rhyne, Sheriff of Leavenworth County, Kansas and James E. Fussell, County Attorney of Leavenworth County, Kansas, Defendants.

No.T -1268, Civil.

1] Complaint For Mandatory Injunction.

Comes now Homer Davis, attorney for the above named plaintiff and prays the court for the issuance of a Mandatory Injunction, directed to and against the above named defendants, requiring them to hold a certain shipment of liquor, to-wit: whiskey, seized by the agents and employees of the above named defendant, F. E. Wells, Director, from the above named plaintiff on October 5, 1955, all as more fully set out hereinafter; to require said defendants, and all of them, to hold said shipment in status quo determining the termination of this action and requiring said defendants, and each of them, to return the said shipment of intoxicating liquors,

to-wit: whiskey, to the plaintiff herein and to direct the defendants, and each of them, not to interfere with the plaintiff's possession and movement of such shipment in interstate commerce to its destination. In support of said complaint, your petitioner shows the court:

1. That the plaintiff herein, W. B. Love, is an individual doing business under the firm name and style of the Love Transfer Company. That the main offices of said Transfer Company are located in the town of Weston, State of Missouri; that the said plaintiff is duly licensed and authorized by virtue of the rules and regulations of the Interstate Commerce Commission of the United States Government to engage in the business of a common carrier between certain parts of the State of Missouri and the State of Kansas; that plaintiff is likewise licensed and permitted under the Rules and Regulations of the Corporation Commission of the State of Kansas to engage in the business of a common carrier in certain portions of the State of Kansas; that the plaintiff is likewise authorized by proper permit from the State of Kansas, Corporation Commission, to transport intoxicating liquors within certain portions of the State of Kansas.

2] That on or about October 5, 1955, the plaintiff while engaged in the course of his business as a common carrier, received a shipment of intoxicating liquor, exact description of which is unknown to the petitioner at this time because the defendants and their agents at the time of the seizure herein complained of, confiscated from plaintiff all his records pertaining to said shipment but which knowledge is within the particular control of the defendants herein, from a firm known as Austins, located in the State of Missouri, which firm is licensed and authorized to sell intoxicating liquors, including whiskey; that said shipment of intoxicating liquors was consigned to an Army Officer living and residing on the Fort Leavenworth Military Reservation, which Reservation is under the exclusive control of the United States Government; that shortly after receiving said shipment for interstate transportation from the said Austin Liquor Store in Platte County, Missouri, to the residence of the Army Officer above mentioned whose name is unknown to plaintiff at this time, the agent and employee of the plaintiff, to-wit: - one Richard Winburn, driving one

of the trucks of the plaintiff, proceeded from said Austin's Liquor Store in Platte County, Missouri, across the Missouri River on the Leavenworth Municipal bridge, into and upon Metropolitan Avenue, located North of the city limits of Leavenworth County, Kansas, on which said Metropolitan Avenue lies wholly within the United States Military Reservation at Fort Leavenworth, Kansas; that upon reaching the toll station located on said Metropolitan Avenue, West of the bridge aforesaid, agents and employees of the defendant, F. E. Wells, Acting Director of the Alcoholic Beverage Control of the State of Kansas, arrested the agent of this plaintiff, Richard Winburn, and seized the shipment of intoxicating liquors, to-wit: whiskey being transported by plaintiff in interstate commerce as aforesaid, caused the agent of this plaintiff, Richard Winburn, to be placed in the Leavenworth County Jail, Leavenworth County, Kansas, on said date and have held and taken into their possession as aforesaid, the intoxicating liquors above referred to and refused and failed to restore the same to this plaintiff.

3] That the said shipment of intoxicating liquors as above referred to, was a shipment in interstate commerce from Platte County, Missouri to the United States Military Reservation, Fort Leavenworth, Kansas. That all proper permits, licenses and orders pertaining to the shipment of goods and interstate commerce, including the intoxicating liquors herein referred to, have been complied with by the plaintiff and that the defendant's seizure of such intoxicating liquors is unlawful and without force or authority in law and in direct violation of the provisions of the Constitution of the United States, regulating interstate commerce; that the defendants have no authority or jurisdiction to control, regulate, or restrict the shipment in interstate commerce of intoxicating liquors from the State of Missouri into the United States Military Reservation, Fort Leavenworth, Kansas, and that all acts done by the defendants and their agents as hereinabove set forth are void, illegal and of no force and effect.

Plaintiff further states that he has no adequate remedy at law and that unless such injunction issue as herein requested he will be deprived of his property without due process of law and will suffer irreparable injury and damage.

Wherefore, the plaintiff prays the court for the issuance of a Mandatory Injunction directed by the Clerk of this court to the defendants and each of them, requiring them to hold the shipment of intoxicating liquors seized by the defendants as hereinabove set forth in status quo, pend-
4] ing the termination of this action and requiring the defendants and each of them, to return the shipment of intoxicating liquors seized herein to the plaintiff, W. B. Love, doing business as the Love Transfer Company of Weston, Missouri and to order and direct the defendants, and each of them, to refrain from interfering with the plaintiff, W. B. Love, doing business as the Love Transfer Company, Weston Missouri, a common carrier, movant of such shipment of interstate commerce to its destination, Fort Leavenworth, Kansas, on the United States Military Reservation.

Homer Davis
Attorney for Plaintiff

[Verified.]

Filed Oct. 6, 1955.

5] [Answer.]

Comes now Chas. W. Pratt, State Director of Alcoholic Beverage Control of Kansas; Harold Fatzer, Attorney General for the State of Kansas; Arden Rhyne, Sheriff of Leavenworth County, Kansas; and James E. Fussell, County Attorney of Leavenworth County, Kansas, defendants in the above-entitled action and for their answer to the complaint for mandatory injunction filed in said cause admit, allege and deny as follows, to-wit:

First Defense

For their first defense, the defendants herein, and each of them, allege that the complaint for mandatory injunction filed herein shows on its face that it is in reality a suit against the State of Kansas by a citizen of the State of Missouri involving the right of the State of Kansas to exercise its sovereign powers in the enforcement of its criminal statutes, notwithstanding the fact that the State of Kansas

is not named as one of the defendants to the suit. That because, in truth, the suit is brought by a citizen of the State of Missouri against the State of Kansas to restrain its officers from the exercise of its sovereign powers, this court has no jurisdiction over the subject matter.

6] Second Defense

For their second defense, to the complaint for mandatory injunction herein, the defendants, and each of them, allege that the complaint fails to state claims against the defendants, or any of them, upon which relief could be granted.

Third Defense

For their third defense to the complaint for mandatory injunction filed herein, the defendants, and each of them, allege that the plaintiff is estopped to deny the authority of the State Director of Alcoholic Beverage Control of Kansas, and his agents, to regulate and control the shipment of the alcoholic liquors hereinafter described and to seek injunctive relief in this court for the following reasons, to-wit:

1. In applying for and accepting a bonded alcoholic liquor carrier permit the plaintiff has submitted to the jurisdiction of the State Director of Alcoholic Beverage Control of the State of Kansas and has given his consent to the control of such shipments by said agency.

2. By his violation of the law of the State of Kansas relating to the possession and transportion of alcoholic liquor, and the evasion of the Kansas tax on alcoholic liquor within the state, the plaintiff has violated section 130, title 18 USCA and for this reason has no standing in this court to seek equitable relief.

7] Fourth Defense

For their fourth defense to the complaint for mandatory injunction filed herein, the defendants, and each of them, deny each and every material allegation in said complaint contained, except as may be hereinafter expressly admitted or alleged.

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Murphy et al. vs. Love

Fifth Defense

For their fifth defense to the complaint for mandatory injunction filed herein, and for further answer thereto, the defendants, and each of them, admit that agents, as employees of the Alcoholic Beverage Control of Kansas and acting in their official capacity on October 5, 1955, in Leavenworth County, Kansas, seized a certain shipment of alcoholic liquors which, at the time of seizure, were being transported over the western approach of the Leavenworth municipal bridge in a westerly direction by one of the trucks belonging to the plaintiff, and being there and then driven by one Richard Cooper Winburn, an employee of plaintiff. Said shipment of alocholic liquors is described as follows: to-wit:

4 fifths House of Lords Scotch Whisky
12 fifths Hiram Walker Gin
16 fifths Barclay's Gold Label Whiskey
34 fifths McCormick Weston Springs Whiskey

66 bottles, total

Said defendants, and each of them, further admit that the said truck driver, Richard Cooper Winburn, was arrested by the agents aforesaid and that the shipment of alcoholic liquors so seized is now being held in the possession of Arden Rhyne, Sheriff of Leavenworth County, Kansas, pending the proper determination of the question of the lawful disposition of such liquors.

8] For further answer herein the defendants, and each of them, allege that said shipment of alcoholic liquor did not have affixed thereto each mark or stamp showing payment of the Kansas gallonage tax on such liquor as required by law, contrary to the provisions of the Alcoholic Beverage Control Act of Kansas.

That the plaintiff holds a Bonded Alcoholic Liquor Carrier Permit No. 178 issued to him on February 23, 1955, by the State Director of Alcoholic Beverage Control of Kansas. That in his application to obtain such a liquor carrier permit and as a condition of the bond given to the State of Kansas to insure plaintiff's compliance with the

laws of the Alcoholic Beverage Control of this state, plaintiff expressly agreed to well, truthfully and faithfully comply with the provisions of the Kansas Liquor Control Act in all respects and with the Rules and Regulations of the State Director of Alcoholic Beverage Control relating to the transportation of alcoholic liquors. A true and correct copy of the application for Bonded Liquor Carrier Permit executed by W. B. Love on February 5, 1955, the Carrier's Bond approved February 23, 1955, and the Carrier's Permit above referred to are hereto attached marked Exhibits "A", "B", and "C" and made a part hereof. That the truck so intercepted by the Alcoholic Beverage Control Agents and hauling such shipment of alcoholic liquors was registered and licensed by the Kansas Alcoholic Beverage Control and is identified by them as being Truck No. 271.

That the shipment of alcoholic liquor aforesaid was consigned from the Austin Liquor Store of Beverly, Missouri, to a Major B. C. Snow Jr. residing in Fort Leavenworth, Kansas. That neither the consignor nor the consignee were licensees under the Kansas Alcoholic Beverage Control Act nor did either of them maintain a bonded warehouse for the storage of such alcoholic liquors within the State of Kansas.

9] That the truck driver, Richard Cooper Winburn, has been arraigned and is now bound over for trial in the District Court of Leavenworth County, Kansas, on charges of possession and transportation of more than two (2) quarts of alcoholic liquor not bearing Kansas gallonage tax stamps or marks affixed thereto, and with evasion of the Kansas tax upon such liquors contrary to the Kansas Statutes in such cases made and provided.

That the plaintiff herein, as a bonded alcoholic liquor carrier permit holder of the Alcoholic Beverage Control of Kansas, has been cited to appear before the State Director of Alcoholic Beverage Control to show cause why his liquor carrier permit should not be suspended or revoked for violation of the Kansas Alcoholic Beverage Control Act in the possession and transportation of the shipment of alcoholic liquors as is above described.

Having answered, the said defendants, and each of them, pray for an order of this court dismissing this suit for lack

of jurisdiction of the subject matter; or, failing this, for a judgment of the court refusing to grant the mandatory injunction sought herein and finding generally for the defendants, and each of them, and against the plaintiff, and awarding to the defendants their cost herein expended and for such other and further relief as the court may find proper in the premises.

C. C. Linley
Rex L. Culley
Attorney for Chas. W. Pratt, State Director of Alcoholic Beverage Control of Kansas
Paul E. Wilson
Attorney for Harold Fatzer, Attorney General of the State of Kansas
James E. Fussell
Attorney for Arden Rhyne, Sheriff of Leavenworth County, Kansas, and James E. Fussell, County Attorney of Leavenworth County, Kansas.

10]

Filed Oct. 28, 1955.

11] Exhibit A.

Validated Amounts 5.75 Cashier H

Pay To The Order Of Richard T.Fadley, State Treasurer Topeka, Kansas 1508 Feb 9 1955 Office Of Director Alcoholic Beverage Control Chas. W. Pratt Director* Form ABC 103

Office of Director
of
Alcoholic Beverage Control

Application For Bonded Liquor Carrier Permit
Under Kansas Liquor Control Act

To: State Director of Alcoholic Beverage Control; Topeka, Kansas

*Rubber stamp impression appearing on copy.

The applicant certifies and warrants that the statements and representations made herein are true and correct and are made for the purpose of qualifying as a bonded liquor carrier under the Kansas Liquor Control Act and the issuance of a permit therefor. The applicant consents and agrees that, if any statements or representations are herein found to be false, the director may refuse to issue said permit or may cause such permit to be revoked forthwith at any time.

(Note: Registration Fee of $5.00 Must Accompany this Application)

1. Name of applicant: W. B. Love DBA Love Transfer

2. Individual, co-partnership or corporation: Individual.

3. Name under which you operate: Love Transfer

4. Address: 727 W. Thomas Weston, Platte Missouri.
(Street Number) (City) (County) (State)

5. What transportation facilities do you offer as common carrier? All trucks have closed vans with rear doors that can be locked or sealed.

6. Under what authority do you operate as a common carrier in Kansas? General commodities from Weston, Mo. to K.C. Mo. & K.C. Kans. Leavenworth & Atchinson, Kans. Regular route over highways 45 92 59 and 71 and return. Authority granted March 10, 1952 Route #R3941.

7. If a common carrier operating motor vehicles:

(a) How many vehicles are you operating in or into Kansas? Three.
(b) Do you own such vehicles? Yes.
(c) Do you lease any vehicles? No. If so, how many? ___
(d) Are these vehicles used exclusively by you as a common carrier? Yes.
(e) Will your name and permit number be permanently painted on a permanent part of each motor vehicle used by you to transport alcoholic liquor in or into Kansas? Yes.
(f) If you are operating less than three motor vehicles, or if your name and permit number is not permanently

painted on a permanent part of each motor vehicle used to transport alcoholic liquor, give description of each vehicle as follows:

Make	Year	Engine No.	Wt. Empty	K.C.C. Tag No.
____	____	_____	_____	_____

11-A] 8. Do you agree, if granted a bonded liquor carrier's permit to move or deliver interstate and intrastate shipments of alcoholic liquor only to a licensee authorized to receive the same under the provisions of the Kansas Liquor Control Act and the rules and regulations promulgated thereunder? Yes.

9. Do you agree, if granted a bonded liquor carrier's permit to abide by the provisions of the Kansas Liquor Control Act and the rules and regulations promulgated thereunder in the transportation of alcoholic liquors in or into the state of Kansas? Yes.

W. B. Love
(Signature of Applicant)

Oath

State of Missouri County of Platte ss

W. B. Love, being first duly sworn, upon oath deposes and says: That he is the applicant who makes the above and foregoing application; that he has read and signed the same, knows the contents thereof and that all statements made therein are true.

(Signed) W. B. Love.

(Seal)

Subscribed in my presence and sworn to before me this 5 day of February, 1955.

Roger G. Wilson
(Notary Public)

My commission expires: 3-14-1956

14] Exhibit B.

Power Of Attorney

[Certified Copy.]

The Western Casualty and Surety Company
Home Office - Fort Scott, Kansas

Know all Men by these Presents: That The Western Casualty And Surety Company, of Fort Scott, Kansas, a corporation of the State of Kansas, having its principal office in the city of Fort Scott, Kansas, pursuant to the following By-Law, which was adopted by the Stockholders of the said Company on December 2, 1953, to-wit:

"Section 27. Resident Officers and Attorneys-in-fact. The president, any vice president or the secretary shall have power and authority to appoint resident vice presidents, resident assistant secretaries and attorneys-in-fact, and to give such appointees full power and authority to make, execute and deliver in the name and on behalf of the corporation, bonds, recognizances, contracts of indemnity and other undertakings and writings of obligatory nature, and to affix thereto the corporate seal of the corporation. The president, any vice president or the secretary shall also have power at any time to remove and revoke the authority of any such appointee."

does hereby nominate, constitute and appoint W. B. Cook, of the City of Kansas City, State of Missouri.

its true and lawful agent(s) and attorney(s)-in-fact, to make, execute, seal and deliver for and on its behalf, and as its act and deed: Any and all bonds and undertakings.

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its offices in Fort Scott, State of Kansas, in their own proper persons.

All authority hereby conferred shall remain in full force and effect until terminated by the Company.

In Witness Whereof, K. H. Mead, Vice-President has hereunto subscribed his name and affixed the corporate seal of the said The Western Casualty And Surety Company, of Fort Scott, Kansas, this 1st day of December, 1954.

(Seal) The Western Casualty And Surety Company
By K. H. Mead/s/
Vice-President

[Verified.]

[The acknowledged power of attorney, dated January 21, 1955, The Western Casualty and Surety Company to John P. Lillig, which appears to be a part of exhibit B, is identical in form with the power of attorney just above with the exception of the language which follows:

"does hereby nominate, constitute and appoint John P. Lillig, of the City of Kansas City, State of Kansas, its true and lawful agent (s) and attorneys(s)-in-fact, to make, execute, seal and deliver for and on its behalf, and as its act and deed: a Carrier's Bond in the penal sum of Five Thousand and no/100 ($5,000.00) Dollars on behalf of W. B. Love dba Love Transfer, in favor of the State of Kansas."

13] Carrier's Bond

Bond No. 207919

Know All Men By These Presents: That we, W. B. Love dba Love Transfer of Weston, County of Platte, State of Missouri, as Principal, and The Western Casualty And Surety Company, a corporation organized and existing under and by virtue of the laws of the state of Kansas and duly licensed to do business in the State of Kansas, as Surety, are held and firmly bound unto the State Director of Alcoholic Beverage Control for and on behalf of the State of Kansas in the penal sum of Five Thousand Dollars, for the payment of which, we bind ourselves, our heirs, executors, administrators, successors

and assigns, jointly and severally, firmly by these presents.

Signed and sealed this 21st day of January, 1955

The condition of this obligation is such that

Whereas, the said Principal is a common carrier authorized under the laws of Kansas to engage in the transportation of merchandise in Kansas and said Principal has been designated by the State Director of Alcoholic Beverage Control of the State of Kansas as a carrier of alcoholic liquors.

Now, Therefore, if the said principal shall well and truly comply with the provisions of the Kansas Liquor Control Act in all respects, and shall faithfully comply with the rules and regulations of the State Director of Alcoholic Beverage Control relating to the transportation of alcoholic liquors, then this obligation shall be null and void; otherwise to remain in full force and effect: Provided, however, That if the surety shall so elect, this bond may be cancelled at any time by the surety giving sixty (60)days notice in writing addressed to and receipted therefor by the State Director of Alcoholic Beverage Control and to the principal named herein, and this bond shall be deemed cancelled at the expiration of the said sixty (60) days.

Witness our hands and seals the day and year first above written.

W. B. Love
Principal.
The Western Casualty And Surety
Company, Surety.
Seal By W. B. Cook
(If signed by attorney in fact
attach copy of written authority)

John P. Lillig
Kansas Resident Agent (Surety)

The above and foregoing bond approved this 23rd day of February, 1955

State Director Alcoholic Beverage Control
Seal By Chas. W. Pratt
Director.

17] Proposed Agreed Statement Of Facts.

1. Lands on which Fort Leavenworth is situated were acquired by the United States in the Louisiana Purchase of 1803.

2. Fort Leavenworth was established as a military post in 1827.

3. The Fort Leavenworth Military Reservation was created by executive order on October 10, 1854.

4. The State of Kansas was organized into a territory by act of Congress approved May 30, 1858.

5. The State of Kansas was admitted as a state in the union on equal footing with the original states January 29, 1861, all as evidenced by the Act of Congress of _____. A true copy is attached hereto and made a part hereof marked Exhibit "A", being 12 Stat. at Large 126.

6. By act approved July 20, 1868, Congress authorized the sale of twenty (20) acres of land from the southeast portion of the Fort Leavenworth Military Reservation to the Leavenworth Coal Company. Said act directed the Secretary of the Interior to issue a patent for the said twenty (20) acres and also to grant to the company, its successors and assigns, the exclusive right to mine all of the coal underlining the remaining lands comprising the military reservation aforesaid, all as evidenced by a true copy of said act attached hereto, made a part hereof and marked Exhibit "B".

18] 7. By act approved July 27, 1868, Congress set apart a strip of land one hundred (100) feet wide along the south boundary of Fort Leavenworth Military Reservation, extending from the Missouri River to the western boundary thereof for the perpetual and extensive use as a public road. Said road to be and remain a public highway for the use of the government of the United States, free from tolls or other charges upon the transportation of any property, troops or mails of the United States, all as evidenced by a true copy of said act attached hereto, made a part hereof and marked Exhibit "C".

8. By patent dated December 28, 1868, the United States conveyed to the Leavenworth Coal Company "The aforesaid twenty (20) acres and fee simple, with the privilege of mining on the terms and conditions aforesaid" for "all coal underlining the remaining lands comprised in the deed of said act in the military reservation aforesaid for a period of sixteen (16) years from the date of said act on the 20th day of July, 1868". A copy of said patent is hereto attached, marked Exhibit "D" and made a part hereof.

* * * * *

10. Early in the year 1955 a new Municipal Leavenworth Toll Bridge was opened and the old Fort Leavenworth Military Reservation Bridge was closed by agreement.

11. The western approach to the new municipal bridge crosses a portion of the twenty (20) acre tract deeded to the Leavenworth Coal Company by the patent described in Paragraph 8 above and across the 100' strip which was subject of the easement in Paragraph 7.

* * * * *

19] 13. Attached hereto marked Exhibit "F" and made a part hereof is a map of the Fort Leavenworth Military Reservation prepared by the office of the Constructing Quartermaster on September 19, 1930, and was obtained from the Judge Advocate of Fort Leavenworth.

* * * * *

20] 17. At all times herein material, one W. B. Love, doing business as under the firm name and style of the Love Transfer Company of Weston, Missouri, operated a common carrier business transporting property by motor vehicle from certain parts of the State of Missouri to certain parts of the State of Kansas. The said W. B. Love was duly licensed under the Interstate Commerce Commission's rules and regulations and under the Kansas Corporation Commission's rules and regulations.

18. The said W. B. Love, Plaintiff, doing business as Love Transfer Company (Weston, Missouri) holds and was operating under on October 5, 1955, and prior thereto permit

of State of Kansas "Bonded Alcoholic Liquor Carrier Permit No. 178 issued February 23, 1955, by the Director of the Alcoholic Beverage Control of Kansas. A copy is attached hereto marked Exhibit "J" and made a part hereof, and also a true copy of the duly executed and verified application of W. B. Love for a bonded liquor carrier's permit under the Kansas Liquor Control Act, and a true copy of a duly executed carrier's bond offered by the said Love in support of said application.

21] 19. At 9:00 a.m. on October 5, 1955, Agents of the Kansas Alcoholic Beverage Control, at a point on the western approach to the new municipal bridge aforesaid which was within the twenty (20) acre tract originally deeded to the Leavenworth Coal Company in 1868 as described and on the 100' strip referred to in Paragraph 7 hereinabove, intercepted a 1951, 1/2 ton International truck bearing 1955 Missouri license plates No. MO 241,867; Fort Leavenworth No. 6087; KCC No. 59,707; KCC No. 50,472; and Alcoholic Beverage Control permit card No. 178, dated February 23, 1955; owned by the Love Transfer Company of Weston, Missouri, which had proceeded in a westerly direction across the new municipal bridge to the point of interception and at that time was hauling, among other things, the following described alcoholic liquor consigned from the Austin Liquor Store of Beverly, Missouri, and consigned to Major B. C. Snow, Jr., of 322-4 Cody Lane, Fort Leavenworth, Kansas, to-wit:

4	fifths House of Lords Scotch Whisky
12	fifths Hiram Walker Gin
16	fifths Barclay's Gold Label Whiskey
34	fifths McCormick Weston Springs Whiskey

66 bottles total

Said alcoholic liquor did not have affixed thereon each mark or stamp showing payment of the Kansas Gallonage Tax. That the State of Missouri Sales Tax had been paid on the alcoholic liquors seized from Plaintiff on October 5, 1955, prior to said seizure and prior to said liquors leaving the State of Missouri. That all required Excise or Inspection Stamps or Labels required as to gallonage under Regulation #7 of the Missouri Department of Liquor Control had been properly purchased and affixed to the alcoholic liquors seized from

Plaintiff prior to such seizure on October 5, 1955. That the Director of Alcoholic Beverage Control, Chas. W. Pratt, is properly and legally appointed under the Kansas Statute. That the Agents making the arrest were the legally and qualified agents of the said Director of Alcoholic Beverage Control.

22] 20. Immediately after the interception, as is above set out, the Alcoholic Beverage Control agents arrested one Richard Cooper Winburn, the driver of the Love Transfer truck in question, and seized the alcoholic liquor above described, taking both the driver and the alcoholic liquor to the office of the Sheriff of Leavenworth County, Kansas. That on October 5, 1955, Richard Cooper Winburn was the duly authorized, acting agent and employee of the Plaintiff and at such time was acting in such capacity. That invoices, Bills of Lading and Freight Tickets accompanied the shipment of alcoholic liquors enroute from Austin's Liquor Store, Beverly, Missouri, to Major B. C. Snow, Jr., 322 - 4 Cody Lane, Fort Leavenworth, Kansas, on October 5, 1955, at the time of such seizure from Plaintiff's truck. The same are attached hereto marked Exhibit "K" and made a part hereof.

21. Truck driver Winburn was charged with the possession and transportation of more than two (2) quarts of alcoholic liquor not bearing Kansas tax stamps thereon in violation of Section 41-407 of the Kansas Alcoholic Beverage Control Act and with evasion of the Kansas tax upon the liquors above described. Winburn has been arraigned and is now awaiting trial in the District Court of Leavenworth County, Kansas.

22. On October 20, 1955, the said W. B. Love, doing business as the Love Transfer Company of Weston, Missouri, was cited to appear on November 17, 1955, before the State Director of the Alcoholic Beverage Control of Kansas to show cause why his permit as a Bonded Alcoholic Liquor Carrier should not be suspended or revoked for violation of sections 41-407 and 41-408 of the Kansas Alcoholic Beverage Control Act, said hearing not having been held at this time.

23] 23. The above stipulation is without prejudice to the right of either party to introduce additional evidence in said case.

Rex Culley
James L. Galle
Attorneys for Chas. W. Pratt, State Director of Alcoholic Beverage Control of Kansas.
Paul E. Wilson
Attorney for Harold Fatzer, Attorney General of the State of Kansas.
Paul E. Wilson
Attorney for Arden Rhyne, Sheriff of Leavenworth County, Kansas, and James E. Fussell, County Attorney of Leavenworth County, Kansas
Homer Davis
Attorney for Plaintiff

Filed Feb. 10, 1956.

Exhibit A.

Chap. XX. -- An Act for the Admission of Kansas into the Union

Whereas the people of the Territory of Kansas, by their representatives in Convention assembled, at Wyandott, in said Territory, on the twenty-ninth day of July, one thousand eight hundred and fifty-nine, did form for themselves a constitution and State government, republican in form, which was ratified and adopted by the people at an election held for that purpose on Tuesday, the fourth day of October, one thousand eight hundred and fifty-nine, and the said Convention has, in their name and behalf, asked the Congress of the United States to admit the said Territory into the Union as a State, on an equal footing with the other States: Therefore:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Kansas shall be, and is hereby declared to be, one of the United States of America, and admitted into the Union on an equal footing with the original States in all

respects whatever. And the said State shall consist of all the territory included within the following boundaries, to wit: Beginning at a point on the western boundary of the State of Missouri, where the thirty-seventh parallel of north latitude crosses the same; thence West on said parallel to the twenty-fifth meridian of longitude west from Washington; thence north on said meridian to the fortieth parallel of latitude; thence east on said parallel to the western boundary of the State of Missouri; thence south with the western boundary of said State to the place of beginning: Provided, That nothing contained in the said constitution respecting the boundary of said State shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with such Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the State of Kansas, until said tribe shall signify their assent to the President of the United States to be included within said State, or to affect the authority of the Government of the United States to make any regulation respecting such Indians, their lands, property, or other rights, by treaty, law or otherwise, which it would have been competent to make if this act had never passed.

Sec. 2. And be it further enacted, That until the next general apportionment of Representatives the State of Kansas shall be entitled to one Representative in the House of Representatives of the United States.

Sec. 3. And be it further enacted, That nothing in this act shall be construed as an assent by Congress to all or to any of the propositions or claims contained in the ordinance of said constitution of the people of Kansas, or in the resolutions thereto attached; but the following propositions are hereby offered to the said people of Kansas for their free acceptance or rejection, which, if accepted, shall be obligatory on the United States and upon the said State of Kansas, to wit: First, That sections numbered sixteen and thirty-six in every township of public lands in said State, and where either of said sections or any part thereof has

been sold or otherwise been disposed of, other lands, equivalent thereto and as contiguous as may be, shall be granted to said State for the use of schools. Second, That seventy-two sections of land shall be set apart and reserved for the use and support of a State University, to be selected by the Governor of said State, subject to the approval of the Commissioner of the General Land Office, and to be appropriated and applied in such manner as the Legislature of said State may prescribe for the purpose aforesaid, but for no other purpose. Third, That ten entire sections of land, to be selected by the Governor of said State, in legal subdivisions, shall be granted to said State for the purpose of completing the public buildings, or for the erection of others at the seat of government, under the direction of the Legislature thereof. Fourth, That all salt springs within the State, not exceeding twelve in number, with six sections of land adjoining or as contiguous as may be to each, shall be granted to said State for its use, the same to be selected by the Governor thereof within one year after the admission of said State, and when so selected to be used or disposed of on such terms, conditions, and regulations as the Legislature shall direct: Provided, That no salt spring or land, the right whereof is now vested in any individual or individuals, or which may be hereafter confirmed or adjudged to any individual or individuals, shall by this article be granted to said State. Fifth, That five per centum of the net proceeds of sales of all public lands lying within said State which shall be sold by Congress after the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to said State for the purpose of making public roads and internal improvements, or for other purposes, as the Legislature shall direct; Provided, That the foregoing propositions hereinbefore offered are on the condition that the people of Kansas shall provide by an ordinance, irrevocable without the consent of the United States, that said State shall never interfere with the primary disposal of the soil within the same by the United States, or with any regulations Congress may find necessary for securing the title in said soil to bona fide purchasers thereof. Sixth, And that the said State shall never tax the lands or the property of the United States in said State: Provided, however, That in case any of the lands herein granted to the State of Kansas have heretofore been confirmed to the Territory of Kansas for the purposes specified in this act, the amount so

confirmed shall be deducted from the quantity specified in this act.

Sec.4 And be it further enacted, That from and after the admission of the State of Kansas, as hereinbefore provided, all the laws of the United States, which are not locally inapplicable, shall have the same force and effect within that State as in other States of the Union; and the said State is hereby constituted a judicial district of the United States, within which a district court, with the like powers and jurisdiction as the district court of the United States for the district of Minnesota, shall be established; the judge, attorney, and marshal of the United States for the said district of Kansas shall reside within the same, and shall be entitled to the same compensation as the judge, attorney, and marshal of the district of Minnesota; and in all cases of appeal or writ of error heretofore prosecuted, and now pending in the Supreme Court of the United States, upon any record from the supreme court of Kansas Territory, the mandate of execution or order of further proceedings shall be directed by the Supreme Court of the United States to the district court of the United States for the district of Kansas, or to the supreme court of the State of Kansas, as the nature of such appeal or writ of error may require; and each of those courts shall be the successor of the supreme court of Kansas Territory, as to all such cases, with full power to hear and determine the same, and to award mesne or final process therein.

Sec. 5. And be it further enacted, That the judge of the district court for the district of Kansas shall hold two regular terms of the said court annually, at the seat of government of the said State, to commence on the second Mondays of April and October in each year.

Approved, January 29, 1861.

Exhibit B.

Chap. CXCIX. -- An Act to authorize the Sale of twenty Acres of Land in the military Reservation at Fort Leavenworth, Kansas.

Whereas the Secretary of War, in behalf of the United States and in accordance with the previous practice of the War Department, on the thirteenth day of November, in the year eighteen hundred and sixty, did execute to Samuel Denman, William H. Russell, and Thomas Ewing, Junior, and their assigns, a lease of twenty acres of land in the military reserve at Fort Leavenworth, State of Kansas, for the term of sixteen years thereafter, with a preference to them of an extension of the term, and with the exclusive right to mine for coal under the lands of said military reserve; and whereas the said lessees and their assigns accepted the said lease, and upon the faith thereof have prosecuted their mining operations under many difficulties at great expense, and have finally succeeded in striking the deep coal beds of that geological region after having expended their entire capital to the amount of forty thousand dollars; and whereas it is now discovered that the said lease is invalid because the Secretary of War was unauthorized in law to make the same, by reason of which the said lessees are deprived of their right to proceed, and are threatened with the total loss of their money, and are without redress; and whereas in view of the incalculable benefit to be derived, not alone by the State of Kansas, but by the whole country adjacent thereto, by the development of the coal strata of the region, the Senate and House of Representatives of the State of Kansas, on the eighteenth day of February, eighteen hundred and sixty-eight, did concur in a joint resolution reciting the above, and respectfully requesting this Congress to act in the premises; and whereas the House of Representatives of the United States have heretofore passed an act directing the sale, in small tracts, of a body of land in said military reserve: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the Leavenworth Coal Company, being the successors and assigns of Samuel Denman, Willia, H. Russell, and Thomas Ewing, junior, in the lease aforesaid, shall have the right to purchase

from the United States twenty acres of land lying in the military reserve at Fort Leavenworth, Kansas, and described as follows: Beginning at the intersection of the south line of the military reserve and the Missouri River, running northwardly thence along the west line of the said Missouri River, thence westwardly in a line parallel to the south line of the military reserve, thence southwardly in a line at right angles with the south line of the military reserve, thence eastwardly in the said south line of the military reserve to the point of beginning, the said lines to be run so as to make the form of the said twenty acres as nearly square as practicable. The said Leavenworth Coal Company shall pay therefor the sum fixed by the United States district judges of the State of Kansas, the eastern district of Missouri, and of the northern district of Illinois, whose reasonable expenses shall be paid out of any money in the treasury not otherwise appropriated; and said lease is hereby extended sixteen years from the passage of this act.

Sec. 2. And be it further enacted, That, upon the payment of the purchase-money for the same, the Secretary of the Interior is hereby directed to issue to the said Leavenworth Coal Company, and its successors and assigns, a patent for the above-described lands, which patent shall also grant to the said company, and its successors and assigns, the exclusive right to mine for all coal underlying the lands now comprised in the military reserve aforesaid.

Approved, July 20, 1868.

Exhibit C.

Chap. CCLXIX. -- An Act donating a Portion of the Fort Leavenworth military Reservation for the exclusive Use of a public Road.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a strip of land one hundred feet in width along along the southern boundary of the Fort Leavenworth military reservation, in the State of Kansas, extending from the Missouri river to the western boundary thereof, be set apart for the perpetual and exclusive use of a public road; and the

said road shall be and remain a public highway for the use of the government of the United States, free from tolls or other charges upon the transportation of any property, troops, or mails of the United States.

Sec. 2. And be it further enacted, That Congress may at any time amend or repeal this act.

Approved, July 27, 1868.

Exhibit D.

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Patent

Department Of The Interior. General Land Office. Washington. June 10, 1915.522083 B

I hereby certify that the annexed copy of patent is a true and literal exemplification from the record which is in my custody in this office.

In Testimony Whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(General Land Office Seal) L.Q.C. Lamar, Recorder of the
(10c U.S.I.R. Stamp cancelled) General Land Office.

The United States Of America:

To all to whom these presents shall come, Greetings:

Whereas, the Act of Congress approved July 20th, 1868, to authorize the sale of twenty acres of land in the Military reservation at Fort Leavenworth, Kansas, is to the following effect.

That the Secretary of War, in behalf of the United States and in accorance with the previous practice of the War Department on the thirteenth day of November, in the year Eighteen hundred and sixty, did execute to Samuel Denman,

William H. Russel, and Thomas Ewing, Jr. and their assigns, a lease of twenty acres of land in the military reserve at Fort Leavenworth, State of Kansas, for the term of sixteen years thereafter, with a preference to them of an extension of the term, and with the exclusive right to mine for coal under the lands of said military reserve; and whereas the said lessees and their assigns accepted the said lease, and upon the faith thereof have prosecuted their mining operations under many difficulties at great expense, and have finally succeeded in striking the deep coal beds of that geological region after having expended their entire capital to the amount of forty thousand dollars; and whereas it is now discovered that the said lease is invalid because the Secretary of War was unauthorized in law to make the same by reason of which the said lessees are deprived of their right to proceed, and are threatened with the total loss of their money, and are without redress; and whereas in view of the incalculable benefit to be derived, not alone by the State of Kansas, but by the whole country adjacent thereto, by the development of the coal strata of the region, the senate and house of representatives of the State of Kansas, on the eighteenth day of February eighteen hundred and sixty eight, did concur in a joint resolution reciting the above and respectfully requesting this Congress to act in the premises; and whereas the House of Representatives of the United States have heretofore passed an Act directing the sale in small tracts of a body of land in said military reserve; Therefore,

"Be it enacted by the Senate and House of Representatives of the United State of America in Congress assembled, That the Leavenworth Coal Company, being the successors and assigns of Samuel Denman, William H. Russel and Thomas Ewing, Jr., in the lease aforesaid shall have the right to purchase from the United States twenty acres of land lying in the military reserve at Fort Leavenworth, Kansas, and described as follows: Beginning at the intersection of the south line of the military reserve and the Missouri river running northwardly, thence along the west line of the said Missouri river, thence westwardly in a line parallel to the south line of the military reserve, thence southwardly in a line at right angles with the south line of the military reserve, thence eastwardly in the said south line of the military reserve to the point of beginning, the said lines to be run so as to make the form,

of said twenty acres as nearly square as practicalbe. The said Leavenworth Coal Company shall pay therefor the sum fixed by the United States district judges of the State of Kansas, the Eastern district of Missouri, and of the Northern district of Illinois, whose reasonable expenses shall be paid out of any money in the treasury not otherwise appropriated, and said lease is hereby extended sixteen years from the passage of this Act.

Sec. 2. And be it further enacted, That upon the payment of the purchase money for the same the Secretary of the Interior is hereby directed to issue to the said Leavenworth Coal Company, and its successors and assigns, a patent for the above described lands, which patent shall also grant to the said Company, and its successors and assigns, the exclusive right to mine for all coal underlying the lands now comprised in the military reserve aforesaid.

And whereas, in connection with the said Act the following proceedings have been had as shown by the papers on file in the General Land Office:

First, a plat certified on the 22nd October, 1868, by the United States Surveyor, General of Kansas, indicating the location of the Fort Leavenworth Military Reserve and also an actual survey of the aforesaid twenty acres, which is situated in the South East corner of the said Reserve and in Township Eight South of Range twenty-two East of the 6th Principal Meridian in Kansas, being bounded and described as follows, to-wit: beginning at the stone monument on the South East corner of the Fort Leavenworth Military Reservation, being the intersection of the south line of the aforesaid Reserve with the right or west bank of the Missouri river, variation by Burts Solar Compass Eleven degrees east, thence North nine degrees west fourteen chains and fifty links along the west side of the Missouri river to a point on rocky bluff where a cross is cut on rock for corner, thence south eighty six degrees and fifty minutes west, thirteen chains and eighteen links to a point where is set a lime stone 28 x 8 x 8 inches marked U.S. on the North west side and L.C.C. on the South East side, thence South three degrees and ten minutes East fourteen chains and forty five links to a point on South line of Fort Leavenworth Military Reserve where a limestone 24 x 8 x 8 inches is set marked U.S. on the North

West side and L.C.C. on the North east side; thence North eighty six degrees and fifty-two minutes East fourteen chains and fifty two links along the South line of the Fort Leavenworth Military Reserve to the place of beginning, containing twenty acres more or less,

Second, The receipt dated December 23rd, 1868, of the Secretary of the Interior showing the payment to him of the sum of fourteen hundred dollars as the consideration money fixed by the United States District Judges according to the terms of the aforesaid Act, for the twenty acres above described.

Third. A transcript of the lease referred to in the preamble of the said Act of 20th July, 1868, in which as modified, it is declared in substance, that in consideration of a lease to said Company for sixteen years of twenty acres of land in the South east corner of said military reserve, with the preference in an extension of said lease together with the concession of the exclusive right of mining and selling such coal as may underlie the United States Military Reserve at Fort Leavenworth, said Company agree to furnish the Military Post, at said fort with coal as they may require from time to time for consumption at that Post, free of charge at the bank, and to pay to the Government of the United States a royalty of one fourth of one cent per bushel on each bushel of coal raised by them, except that furnished for Government purposes.

Fourth, The opinion dated 7th October, 1868, of the Attorney General of the United States, in which it is held as follows, that the Act simply authorize the lease, which was before invalid, to be made valid and effective for sixteen years thereafter, but certainly before it can have any binding force upon the lessees or their assigns, their consent thereto must be obtained, and that the Company on payment of the purchase money for the land, will be entitled to a patent therefor in fee, and with it a grant also of the exclusive right of mining the coal underlying the rest of the Reserve for the period limited by the terms of the lease authorized to be extended as mentioned, and that the grant of this privilege should accordingly embody provisions similar to those contained in the lease respecting the same privilege.

Fifth. The order dated December 22nd, 1868, of the Secretary of the Interior directing the patent to issue in accordance with the aforesaid opinion of the Attorney General and to be delivered when payment for the land shall have been made as provided in the Act, which payment has been duly made as hereinbefore indicated.

And whereas said Company have requested the issue of a patent granting to them and their assigns in fee, twenty acres of land and also the exclusive right to mine for all coal underlying the remaining lands comprised in said Military reservation at the date of said Act for the term of sixteen years therefrom with the preference in an extension upon the same terms, conditions and stipulations mentioned in the original lease.

Now Know Ye, That the United States of America in consideration of the premises and pursuant to the Act of Congress aforesaid, to the said opinion of the Attorney General, and the order aforesaid of the Secretary of the Interior Have Given and Granted and by these presents Do Give and Grant unto the said Leavenworth Coal Company and its successors and assigns the title in fee to the aforesaid twenty acres in the South east corner of the Fort Leavenworth Military Reserve and also the exclusive right to Mine for all coal underlying the remaining lands comprised at the date of said Act in the Military Reserve aforesaid for a period of sixteen years from the date of said Act of 20th July, 1868, reserving to the said Company as the assigns of the lessees the preference in an extension upon the express conditions nevertheless that said Company, its successors and assigns, shall furnish the United States Military Post at Fort Leavenworth with coal as they may require from time to time free of charge at the bank, and said Company shall pay as a royalty to the Government of the United States one fourth of one cent per bushel on each bushel of coal raised by them, except that furnished for Government purposes, and according to such regulations as may from time to time be prescribed by the Secretary of the Interior for the collection of said royalty, and on failure so to furnish said Post with coal or to pay said royalty, the right to mine granted by these presents shall thenceforth wholly cease and determine.

To have and to hold unto the said Leavenworth Coal Company, its successors and assigns, forever, the aforesaid twenty acres in fee simple, with the privilege of mining on the terms and conditions aforesaid for all coal underlying the lands comprised at the date of said Act in the Military Reserve aforesaid.

In testimony whereof, I, Andrew Johnson, President of the United States, have caused these Letters to be made Patent and the Seal of the General Land Office to be hereunto affixed,

Given under my hand at the City of Washington this twenty-eighth day of December in the year of our Lord one thousand eight hundred and sixty eight and of the Independence of the United States the Ninety-third.

By the President Andrew Johnson
Martin Buell Acting Recorder of the General
(Seal) Land Office Ad Interim

Recorded on the 13th day of March A.D. 1920, at 8:30 o'clock A.M.

M. E. Howard, Register of Deeds

Witnesses as to signatures of Stewart Van Vliet, Sam'l Denman & Thos. Ewing, Jr.
Benjamin C. Card
William Hickman

Witness as to signature of W. H. Russell
J. B. Simpson

Stewart Van Vleit (Seal)
Capt. A. Qr.
Samuel Denman (Seal)
Thos. Ewing, Jr. (Seal)
Wm. H. Russell (Seal)

I authorize Samuel Denman to sell and in my name assign and transfer at his discretion my interest in the Lease from the United States to Denman, Russell and Ewing of Twenty acres of the Fort Leavenworth Reservation and of the coal which may underlie the said Reservation.

Thos. Ewing, Jr.

In Consideration of One Dollar to me in hand paid by Frederick Hann of Leavenworth, Kansas I do hereby assign to

him the said Hann all the interest I have and own in and arising from the within lease on the following condition, viz: That he shall immediately recommence thd boring after coal heretofore made by me, Wm. H. Russell and Sam Denman and if successful and a workable vein of coal shall be found by him he shall as soon thereafter as he can make the said vein of coal available to him, either by working the same or by sale thereof, repay to me, my heirs and assigns the sum of One Hundred and eighty Dollars hitherto advanced by me in the said Borings after coal. In Witness Whereof I do hereto affix my hand by my attorney Sam'l. Denman whom I have authorized to dispose of my interest in the above.

Leavenworth City, April 17th, 1863 T. Ewing, Jr.
5¢ Int. Rev. Stamp by his atty. Sam Denman

In Consideration of One Dollar to me paid by Frederick Hann of Leavenworth, Kansas I do hereby assign to the said Hann whatever and all the interest I have in and arising from the within Lease on the condition following: That he shall recommence the borings after coal heretofore made by me and others, without unnecessary delay and if successful a workable vein of good coal shall be found by him, he shall as soon thereafter as he can make the said vein of coal available to him, either by sale thereof or working the same, to pay to me, my heirs or my assigns the sum of Five Hundred Dollars whitherto by me advanced in money and labor in the said borings after coal.

As Witness my hand and seal this April 17th, 1863 at Leavenworth City, Kansas.
5¢ Int.Rev.Stamp affixed. Sam Denman (Seal)

Recorded August 27th A.D. 1863 at 10:00 o'clock A.M.
W. S. Van Doren, Register of Deeds

Book Y - Page 72

Whereas on the First day of May A.D. 1860 Samuel Denman, William H. Russell and Thomas Ewing, Jr. by letter of that date addressed to Stewart Van Vliet assistant Quarter Master of the U.S. Army at Fort Leavenworth in the Territory of Kansas made a proposition to the General Government of the

United States in the words following to-wit: "We the undersigned do propose to run the risk and incur the expense of sinking a shaft in search of coal at a suitable point on the Missouri River and upon the lands of the United States Military Reserve at Fort Leavenworth, Kansas Ter. provided that the War Department will lease to us for the Term of Twenty years, with the privilege to us of Renewal for Twenty years longer on the same terms, the exclusive right of mining and selling such coal as may underlie the United States Reserve at Fort Leavenworth aforesaid, together with a right to use for the same term of time a sufficient quantity of land to be set apart to us lying on the West side of the Missouri River and at the intersection of the south line of the Reserve and the River for all mining purposes, machinery, dwellings, sheds, shops, warehouses, stables, stockcaralls, gardens and wharf privileges to be used by us during the term of time above named; and if we succeed in finding merchantable coal of sufficient thickness to work, we do further propose in consideration of the Lease and grant aforesaid, to furnish the Military Post at Fort Leavenworth aforesaid with coal as they may require from time to time for consumption at post, free of charge at the Bank so soon as it is raised in quantity sufficient and further should our experiment be unsuccessful or should we at any time during the term of the Lease abandon the premises or should we fail to comply with the Terms of the Lease, then the same shall be forfeited and the Government may resume possession of the premises, And we further agree to commence operations within six months after our proposition may be accepted and diligently prosecute the work to completion. And whereas the Secretary of War by letter dated September 6th A.D. 1860 addressed to the said Stewart Van Vliet assistant Quartermaster as aforesaid, accepted the above proposition on the Terms and conditions therein named, subject only to the following modification to-wit:

First: That the said Lease should run for Sixteen (16) years, reserving to the Lessees the preference in an extension and Second that the Lessees should further agree to pay to the Government of the United States one-fourth of one cent pr. bushel on each bushel of coal raised by them except that furnished for Government purposes. Now Therefore, the said Samuel Denman, William H. Russell and Thomas Ewing, Jr. do hereby assent to the modifications of the said proposition made by the Secretary of War as aforesaid and for themselves,

their heirs and assigns do contract with the Government of the United States to faithfully perform all the stipulations by them to be performed according to the terms of the said proposition and the modifications thereof above recited. And the said Stewart Van Vleit assistant Quarter Master of the U.S. Army under instructions from the War Department and on behalf of the Government of the United States hereby leases and grants to said Samuel Denman, William H. Russell and Thomas Ewing, Jr. their heirs and assigns, the rights, immunities and privileges, set forth on their proposition, subject however to the modifications and conditions prescribed as aforesaid by the Secretary of War and hereby set apart and designates, subject to the approval of the Secretary of War to and for the use of the said Lessees, their heirs and assigns, as provided in the above recited contract. Twenty acres on the Surface of said Military Reserve in a form as nearly square as practicable, bounded on the East by the Missouri River and on the South by the southern line of the said Reserve.

As Witness our hands and seals at Fort Leavenworth, Kansas Territory this Thirteenth day of November A.D. 1860.

Exhibit F

RESERVATION

(Page 33)

FORT LEAVENWORTH KANSAS.

U.S. Penitentiary Act Of Congress Approved May 31, 1929.

REVISED JUNE 5, 1941
TO SHOW NEW RECEPTION CTR.

N. 0°34'30" W 2312.3'

N 0°07'14" E 6970.9'

Air Corps Landing Field & Hangar

MISSOURI RIVER

Railroad Rights of Way

Missouri Pacific R.R. Right of Way, not to exceed 100' in width granted originally to Leavenworth Atchison & Northwestern R.R. by Act of Congress approved July 27, 1868

Chicago Rock Island & Pacific R.R. Right of Way not to exceed 100' in width granted originally to Leavenworth & Des Moines R.R. succeeded by Chicago & Southwestern R.R., succeeded by Chicago, R I & Pac. R.R (July 27, 1868)

Leavenworth Kansas & Western R.R (Owned by Union Pacific) Right of Way, width not specified, granted originally to Kansas Central RR in 1871.

Leavenworth Northern & Southern R.R (Owned and operated by Santa Fe) Right of Way not to exceed 100' in width granted by Act of Congress approved July 3, 1886.

Leavenworth Rapid Transit R.R Right of Way 50' wide with Depot grounds granted by Act of Congress approved Sep. 10 1888.

Revocable Licenses of Railroads

Kansas City Western R.R (Electric) Right of Way width not specified, granted to Kansas City Leavenworth RR by Sec of War Aug 25, 1900

Leavenworth, Kansas & Western RR Right of Way for spur track to Federal Penitentiary granted by Sec. of War in 1908

Change of track connections at Federal Penitentiary approved by Sec. of War in letter dated Dec 22, 1910, to Attorney General

Bridge

Federal Prison Annex

Stone Quarry

Dam

Golf Course

Creek

Mills Creek

GRANT AVE

Reception Center Area

Water Works

Sewer Outlet

Valve House

Penitentiary

FORT LEAVENWORTH MILITARY RESERVATION

Note Bearings are true

Scale in Feet

Office Of The Constructing Quartermaster
Fort Leavenworth, Kans.

BOUNDARY MONUMENTS

- FOUND IN POSITION
- NOT FOUND
- BOUNDARY NOT MARKED
- BROKEN BUT IN POSITION

1552.

Legend

Adjacent to City of Leavenworth, Kan

Reservation declared by Executive Order Oct 10, 1854

Diminished by many grants and concessions

Timber Reservation declared June 21, 1838

Area 10 miles square

Porting relinquished July 12, 1843

Present area of Timber Reserve about 939.37 acres.

Present area of Post Reserve about 6029.81 acres

Jurisdiction ceded by Legislature of Kansas Feb 22, 1875

Post established in 1827.

Act of June 10, 1896, sets apart that portion (305 acres) south of the red line for new penitentiary buildings

Latitude 39°21'

Longitude 94°55'

Revocable licenses dated Sep 3, 1909 granted to E W Snyder and others to construct operate and maintain a road on the east bank of the Missouri River extending from south side of U.S. Timber Res. to eastern approach of Fort Leavenworth Bridge

Legend (continued)

3/1.54 acres purchased in 1909 as addition to Reservation on west

Present area of Post Reserve 6447 Acres

Agreement dated Dec 10, 1910 and Jan 15, 1911, between the Union Pacific R.R and the Missouri Pacific RR respectively and the United States, by which the latter can lay a 24" sewer on Right of Way of these railroads

Schroeder 43½ Ac Oct 18 09 Sept 29 09

Wacker 56 Ac Oct 23 09

Dischana 43½ Ac Oct 23 09

Kern 22.98 Ac Oct 23 09

Kern 28.35 Ac Oct 23 09

E Hund 99.91 Acres Oct 23 09

Curran 27.93 Oct 23 09

Former Boundary

Present Boundary

Center of Sec 19

Center of Sec 20

S 0°29'38" E 4195.3'

S 75°40' W 300'

S 3°10' E 600'

S 39°26' W 440'

S 0°44' W 1090'

E 80'

W 132'

S 69°42' W 238'

S 49°44' W 390'

S 37°32' E 330'

S 79°31' W 500'

S 3°00'30" W 1305'

Highway 73-A

Army and Division Range

U.S. PENITENTIARY RESERVATION AREA 305 A

Designated by Act of June 10 96 as site for new penitentiary buildings

Exhibit F.

A-146

(P.24 - Case) Murphy et al. vs. Love

Exhibit J.
State of Kansas
Office of Director
of
Alcoholic Beverage Control
Bonded Alcoholic Liquor Carrier Permit No. 178

This certifies that W. B. Love d/b/a Love Transfer of 727 West Thomas, Weston, Missouri, is a bonded alcoholic liquor carrier effective February 23rd, 1955, under the Kansas Liquor Control Act.

State Director Alcoholic Beverage Control
Chas. W. Pratt
Director.

(Seal)

Exhibit K.

Date October 5/55
Order No: _____

Invoice

The Austin Store
Since 1933
Beverly, Missouri

To Love Transfer As Agent For:

Purchaser Maj. B. C. Snow, Jr.,
Address 322-4 Cody Lane,
City Ft. Leavenworth, Kansas.

6 cases assorted liquors

Mdse. Total	210.78
COD Fee	
Freight	1.91
Total	212.69

Prepaid

The Above Merchandise Received in Good Condition
Signed _____

26] [Findings of Fact and Conclusions of Law.]

The Court now makes the following "Findings of Fact" and "Conclusions of Law" in the above entitled case:

Findings Of Fact

1. Lands on which Fort Leavenworth is situated were acquired by the United States in the Louisiana Purchase of 1803.

2. Fort Leavenworth was established as a military post in 1827.

3. The Fort Leavenworth Military Reservation was created by executive order on October 10, 1854.

4. The State of Kansas was organized into a territory by act of Congress approved May 30, 1858.

5. The State of Kansas was admitted as a state in the union on equal footing with the original states January 29, 1861.

6. By act approved July 20, 1868, Congress authorized the sale of twenty (20) acres of land from the southeast portion of the Fort Leavenworth Military Reservation to the Leavenworth Coal Company. Said act directed the Secretary of the Interior to issue a patent for the said twenty (20) acres and also to grant to the company, its successors and assigns, the exclusive right to mine all of the coal underlining the remaining lands comprising the military reservation aforesaid.

27] 7. By act approved July 27, 1868, Congress set apart a strip of land one hundred (100) feet wide along the south boundary of Fort Leavenworth Military Reservation, extending from the Missouri River to the western boundary thereof for the perpetual and extensive use as a public road. Said road to be and remain a public highway for the use of the government of the United States, free from tolls or other charges upon the transportation of any property, troops or mails of the United States.

8. By patent dated December 28, 1868, the United States conveyed to the Leavenworth Coal Company "The aforesaid twenty (20) acres and fee simple, with the privilege of mining on the terms and conditions aforesaid" for "all coal underling the remaining lands comprised in the deed of said act in the military reservation aforesaid for a period of sixteen (16) years from the date of said act on the 20th day of July, 1868."

9. Early in the year 1955 a new Municipal Leavenworth Toll Bridge was opened and the old Fort Leavenworth Military Reservation Bridge was closed by agreement.

10. The western approach to the new municipal bridge crosses a portion of the twenty (20) acre tract deeded to the Leavenworth Coal Company by the patent described in Paragraph 8 above and across the 100' strip which was subject of the easement in Finding 7.

11. That one W. B. Love, doing business as under the firm name and style of the Love Transfer Company of Weston, Missouri, operated a common carrier business transporting property by motor vehicle from certain parts of the State of Missouri to certain parts of the State of Kansas. The said W. B. Love was duly licensed under the Interstate Commerce Commission's rules and regulations and under the Kansas Corporation Commission's rules and regulations.

12. The said W. B. Love, Plaintiff, doing business as Love Transfer Company (Weston, Missouri) holds and was operating under on October 5, 1955, and prior thereto permit of State of Kansas "Bonded Alcoholic Liquor Carrier Permit No. 178 issued February 23, 1955, by the Director of the Alcoholic Beverage Control of Kansas.

28] 13. At 9:00 a.m. on October 5, 1955, Agents of the Kansas Alcoholic Beverage Control, at a point on the western approach to the new municipal bridge aforesaid which was within the twenty (20) acre tract originally deeded to the Leavenworth Coal Company in 1868 as described and on the 100' strip referred to in Finding 7 hereinabove, intercepted a 1951, 1/2 ton International truck bearing 1955 Missouri license plates No. MO 241,867; Fort Leavenworth No. 6087; KCC No. 59,707; KCC No. 50,472; and Alcoholic Beverage Control

permit card No. 178, dated February 23, 1955; owned by the Love Transfer Company of Weston, Missouri, which had proceeded in a westerly direction across the new municipal bridge to the point of interception and at that time was hauling, among other things, the following described alcoholic liquor consigned from the Austin Liquor Store of Beverly, Missouri, and consigned to Major B. C. Snow, Jr., of 322-4 Cody Lane, Fort Leavenworth, Kansas, to-wit:

4	fifths House of Lords Scotch Whiskey
12	fifths Hiram Walker Gin
16	fifths Barclay's Gold Label Whiskey
34	fifths McCormick Weston Springs Whiskey
66	bottles total

Said alcoholic liquor did not have affixed thereon each mark or stamp showing payment of the Kansas Gallonage Tax. That the State of Missouri Sales Tax had been paid on the alcoholic liquors seized from Plaintiff on October 5, 1955, prior to said seizure and prior to said liquors leaving the State of Missouri. That all required Excise or Inspection Stamps or Labels required as to gallonage under Regulation #7 of the Missouri Department of Liquor Control had been properly purchased and affixed to the alcoholic liquors seized from Plaintiff prior to such seizure on October 5, 1955. That the Director of Alcoholic Beverage Control, Chas. W. Pratt, is properly and legally appointed under the Kansas Statute. That the Agents making the arrest were the legally and qualified agents of the said Director of Alcoholic Beverage Control.

14. That the arrest and seizure referred to in the above Finding took place at a point within the jurisdiction of the State of Kansas.

29] 15. Immediately after the interception, as is above set out, the Alcoholic Beverage Control agents arrested one Richard Cooper Winburn, the driver of the Love Transfer truck in question, and seized the alcoholic liquor above described, taking both the driver and the alcoholic liquor to the office of the Sheriff of Leavenworth County, Kansas. That on October 5, 1955, Richard Cooper Winburn was the duly authorized, acting agent and employee of the Plaintiff and at such time was acting in such capacity. That invoices,

Bills of Lading and Freight Tickets accompanied the shipment of alcoholic liquors enroute from Austin's Liquor Store, Beverly, Missouri, to Major B. C. Snow, Jr., 322-4 Cody Lane, Fort Leavenworth, Kansas, on October 5, 1955, at the time of such seizure from Plaintiff's truck. All of which were introduced in evidence herein.

16. Truck driver Winburn was charged with the possession and transportation of more than two (2) quarts of alcoholic liquor not bearing Kansas tax stamps thereon in violation of Section 41-407 of the Kansas Alcoholic Beverage Control Act and with evasion of the Kansas tax upon the liquors above described. Winburn has been arraigned and is now awaiting trial in the District Court of Leavenworth County, Kansas.

17. On October 20, 1955, the said W. B. Love, doing business as the Love Transfer Company of Weston, Missouri, was cited to appear on November 17, 1955, before the State Director of the Alcoholic Beverage Control of Kansas to show cause why his permit as a Bonded Alcoholic Liquor Carrier should not be suspended or revoked for violation of sections 41-407 and 41-408 of the Kansas Alcoholic Beverage Control Act, said hearing not having been held at this time.

18. That the shipment of the alocholic liquor referred to herein constituted an Interstate Shipment under the Commerce Clause of the Constitution of the United States.

19. That no taxes were due or collectable by the State of Kansas on the liquor seized and involved in this action.

20. That a Mandatory Injunction as prayed for in the Complaint herein should issue under the seal of the Clerk of this Court forthwith.

30] 21. That the liquor seized herein should be returned by the United States Marshall to the petitioner.

Murphy et al. vs. Love

Conclusions Of Law

1. That the Court has jurisdiction of the parties and the subject matter of the litigation.

2. That the arrest and seizure complained of took place within the jurisdiction of the State of Kansas.

3. That the seizure constituted an interference with and a burden upon an interstate shipment and was without legal authority.

4. That the State of Kansas or its agents have no authority to levy or collect any tax on liquor seized and involved in this action.

5. That the plaintiff is entitled to relief prayed for in the complaint.

Delmas C. Hill
Judge

Filed Jan. 7, 1957.

31] Journal Entry Of Judgment.

The above entitled and numbered cause coming on to be heard on the 30th day of July, 1956, and all parties thereto having appeared by counsel, and the Court having heard the pleadings, the evidence, and arguments of counsel the cause is submitted by the parties upon written Stipulation and upon due consideration thereof it appearing to the Court that the plaintiff should be granted the relief prayed for in its complaint, it is therefore on this 7th day of January 1957,

Ordered, Adjudged and Decreed that a Mandatory Injunction issue by this Court and that the defendants, their officers, agents and employees, be permanently and perpetually enjoined and restrained from interferring with the plaintiff, W. B. Love, doing business as the Love Transfer Company, Weston, Missouri, a common carrier, from transporting the liquor described in the Complaint herein from the State of Missouri to its destination on the Fort Leavenworth Military

Reservation. That the United States Marshal of Kansas return to the plaintiff the alcoholic liquors in his possession which were seized in this action.

That the defendants, their officers, agents and employees be, and they are hereby further restrained and perpetually enjoined from seizing, or interferring with the petitioner in his transporting, as a common carrier, like shipments of alcoholic liquors, from the State of Missouri to the Fort Leavenworth Military Reservation.

32] It is further Ordered, Adjudged and Decreed that the Findings of Fact and Conclusions of Law filed by the Court herein constitute and are a part of the judgment and Decree of the Court in this cause.

It Is Further Ordered, Adjudged and Decreed that the defendant, Chas. W. Pratt, State Director of Alcoholic Beverage Control of Kansas, pay the costs of these proceedings to be taxed by the Clerk of this Court, and that execution issue for the same.

Dated January 7th, 1957.

Delmas C. Hill
Judge

Filed Jan. 7, 1957.

33] Order Substituting Parties.

On this 22nd day of January, 1957, it is by the Court ordered that W. E. Murphy be and he is hereby substituted as party defendant for Charles W. Pratt, Director of the Alcoholic Beverage Control and that John Anderson, Jr., be and he is hereby substituted as party defendant for Harold R. Fatzer, Attorney General of the State of Kansas.

Delmas C. Hill
Judge

Entered Jan. 22, 1957.

34] Notice Of Appeal.

Notice is hereby given that the defendants above named, and each of them, hereby appeal to the United States Court of Appeals for the Tenth Circuit from the final judgment granting an injunction in favor of plaintiff and against defendants, entered in this action on the 7th day of January, 1957.

Dated January 21, 1957.

John Anderson, Jr.,Attorney General
Paul E. Wilson, Assistant Attorney General
James L. Galle, Topeka, Kansas
Craig Irwin, Topeka, Kansas
Attorneys for Defendants.

Filed Jan. 22, 1957.

35] Bond For Costs On Appeal Secured By Cash Deposit.

The defendants, having filed Notice of Appeal from the order of this Court entered on the 7th day of January, 1957, to the United States Court of Appeals for the Tenth Circuit, hereby deposit in the registry of said Court the sum of $250, subject to the orders of the Court, as security that said appellants shall prosecute their said appeal to effect, and that said appellants shall pay to the appellee all costs if the appeal is dismissed, or the judgment affirmed, or such costs as the appellate court may award if the judgment is modified.

John Anderson, Jr., Attorney General
Paul E. Wilson, Assistant Attorney General
James L. Galle, Topeka, Kansas
Craig Irwin, Topeka, Kansas
Attorneys for Defendants

Filed Feb. 5, 1957.

36] Statement Of Points Pursuant To Rule 75 (d) Of The Rules Of Civil Procedure.

The appellees hereby state the points on which they intend to rely on their appeal are as follows:

(1) The Court erred in finding as a matter of fact that the shipment of alcoholic liquor referred to herein constituted an interstate shipment under the Commerce Clause of the Constitution of the United States.

(2) The Court erred in finding as a matter of fact that no taxes were due or collectable by the State of Kansas on the liquor seized and involved in this action.

(3) The Court erred in finding as a matter of fact that a mandatory injunction prayed for in the complaint herein should issue under the seal of the clerk of this court forthwith.

(4) The Court erred in finding as a matter of fact that the liquor seized herein should be returned by the United States Marshal to the petitioner.

(5) The Court erred in its conclusion that said court has jurisdiction over the parties and subject matter of this litigation.

(6) The Court erred in its conclusion that the seizure herein constitutes an interference with and a burden upon an interstate shipment and was without legal authority.

37] (7) The Court erred in concluding as a matter of law that the State of Kansas or its agents have no authority to levy or collect any tax on liquor seized or involved in this action.

(8) The Court erred in granting judgment to the plaintiff and against the defendants.

John Anderson, Jr., Attorney General
Paul E. Wilson, Assistant Attorney General
James L. Galle, Topeka, Kansas
Craig Irwin, Topeka, Kansas
Attorneys for Defendants.

Filed Feb. 8, 1957.

40] Clerk's Certificate.

I, Harry M. Washington, Clerk of the United States District Court for the District of Kansas, do hereby certify the within and foregoing to be the original record and proceedings in case No. T-1268, entitled W. B. Love, an individual doing business as The Love Transfer Company, Weston, Missouri, Petitioner, vs. F. E. Wells, acting Director of Alcoholic Beverage Control of Kansas; Harold Fatzer, Attorney General of the State of Kansas; Arden Rhyne, Sheriff of Leavenworth County, Kansas and James E. Fussell, County Attorney of Leavenworth County, Kansas, Defendants, in said court as is deemed necessary for record on appeal on file herein.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Topeka, in said District of Kansas, this 26th day of February, 1957.

(Seal)

Harry M. Washington, Clerk
By Carol Brichell
Deputy

Filed United States Court of Appeals Tenth Circuit, March 4, 1957, Robert B. Cartwright, Clerk.

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JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957.

No. 741

W. E. MURPHY, Director of Alcoholic Beverage Control; JOHN ANDERSON, JR., Attorney General of the State of Kansas; ARDEN RHYNE, Sheriff of Leavenworth County, Kansas; and JAMES E. FUSSELL, County Attorney of Leavenworth County, Kansas,
Petitioners,

vs.

W. B. LOVE, an Individual Doing Business As THE LOVE TRANSFER COMPANY, Weston, Missouri,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

JOHN ANDERSON, JR.,
Attorney General of The State of Kansas,
State House,
Topeka, Kansas,
Counsel for Petitioners.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957.

No.

W. E. MURPHY, Director of Alcoholic Beverage Control; JOHN ANDERSON, JR., Attorney General of the State of Kansas; ARDEN RHYNE, Sheriff of Leavenworth County, Kansas; and JAMES E. FUSSELL, County Attorney of Leavenworth County, Kansas,

Petitioners,

vs.

W. B. LOVE, an Individual Doing Business As THE LOVE TRANSFER COMPANY, Weston, Missouri,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit entered in the above entitled case on October 29, 1957.

CITATIONS TO OPINIONS BELOW.

The District Court did not issue a formal written opinion. The journal entry of the District Court appears in the record (Rec. 40). The majority and dissenting opinions of the Court of Appeals for the Tenth Circuit are set out in Appendix B.

JURISDICTION.

The judgment of the Court of Appeals entered on October 29, 1957, for which review is urged herein, is a final judgment.

The petitioners have no further remedy other than certiorari to this Court.

Jurisdiction of this Court is invoked under 28 U.S.C., § 1254(1).

QUESTIONS PRESENTED.

(1) Whether 4 U.S.C., §§ 105-110 (the Buck Act), a federal retrocession for certain state taxation purposes, permits the seizure of a shipment of liquor originating in Missouri to an individual residing on a federal military reservation in Kansas, by Kansas authorities on the basis of state liquor tax violations, notwithstanding the Commerce Clause of the United States Constitution?

(2) Whether 18 U.S.C., § 13, the Assimilative Crimes Act, adopts state regulatory measures which include criminal provisions?

CONSTITUTIONAL PROVISIONS INVOLVED.

The constitutional provisions involved are: (1) The Twenty-first Amendment, U. S. Const., Amend. XXI; (2) The Commerce Clause, U.S. Const., Art. I, § 8.

STATUTES INVOLVED.

The statutory provisions involved are Secs. 105-110 of the Buck Act, 4 U.S.C., §§ 105-110 (appendix A), and the Kansas Liquor Control Act (appendix A).

STATEMENT.

The respondent filed a petition in the Federal District Court for the District of Kansas requesting a mandatory injunction to prohibit the State of Kansas from interfering with shipments of intoxicating liquor to individuals residing on the Fort Leavenworth Military Reservation.

The jurisdiction of the District Court was predicated on the grounds of interstate commerce. The shipment in question originated in the state of Missouri.

W. B. Love (respondent) is an individual who does business as the Love Transfer Company of Weston, Missouri. The Love Transfer Company operates as a common carrier, licensed by the United States Government, the State of Kansas, and the State of Missouri (Rec. 35).

On October 5, 1955, agents of the Kansas Alcoholic Beverage Control intercepted one of respondent's trucks carrying a consignment of liquor (a total of 66 bottles) in route from the Austin Liquor Store of Beverly, Missouri, to the Federal Military Reservation, Fort Leavenworth, Kan-

sas. The shipment of liquor was consigned to Major B. C. Snow, Jr., who resided on the military reservation at Fort Leavenworth. The seized liquor was not marked or stamped with Kansas stamps, evidencing payment of the Kansas gallonage tax as required by Kansas G. S. 1949, 41-407 (app. A). The sales tax of the State of Missouri had been paid on the shipment (Rec. 38).

At the time the liquor was intercepted the driver of the truck, Richard Cooper Winburn, was arrested and taken with the seized liquor to the office of the Sheriff of Leavenworth County, Kansas. Winburn, the driver, was charged with the possession and the transportation of more than two (2) quarts of alcoholic liquor not bearing Kansas tax stamps in violation of Kan. G. S. 1949, 41-407. Winburn was arraigned and was awaiting trial in the District Court of Leavenworth County, Kansas, at the time the order of the Federal District Court granting respondent's requested injunction was entered. Winburn is presently at liberty under recognizance, awaiting final disposition of his case. The District Court in ruling on the request for the injunction entered as findings of fact (Rec. 39) that the shipment of alcoholic liquor involved in the instant case constituted an interstate shipment under the Commerce Clause of the United States Constitution (Finding No. 18); that no taxes were due or collectable by the State of Kansas on the liquor seized in the instant action (Finding No. 19); that the mandatory injunction prayed for in the complaint should issue under the seal of the Clerk of the Court (Finding No. 20); and that the liquor seized in the instant case should be returned by the United States Marshal to the petitioner. The Court below affirmed the rulings of the District Court (Bratton, C. J., dissenting) (app. B).

REASONS FOR GRANTING THE WRIT.

1. The Decision of the Court Below Raises a Novel Question, Not Previously Passed On by This Court Concerning the Inter-Relationship of the United States Constitution, Amend. XXI, the United States Constitution, Art. I, § 8 (the Commerce Clause), and 4 USC., §§ 105-110 (the Buck Act).

The effect of the Interstate Commerce Clause upon the Twenty-first Amendment appears to be clearly defined. *Johnson* v. *Yellow Cab Transit Co.*, 321 U.S. 383 (1944). (Transportation through a state for delivery to an area, within the boundaries of the state, which is under the exclusive jurisdiction of the United States *held* not to be a violation of laws prohibiting the importation into the state of intoxicating liquor.); *Duckworth* v. *Arkansas*, 314 U.S. 390 (1941) (state's confiscation of interstate liquor shipment upheld where the shipper had failed to post bond to insure prevention of diversion.) *Accord*, *Carter* v. *Virginia*, 321 U.S. 131 (1943).

This Court has not considered nor has research revealed consideration elsewhere of the effect of federal retrocession, through the Buck Act, upon established federal-state jurisdictional principles when the commodity involved in an interstate shipment is intoxicating liquor.

The Buck Act has received a liberal construction. *Howard* v. *Commissioners of Louisville*, 344 U.S. 624 (1953). The purpose of the Buck Act was to provide for uniformity in the administration of state sales and use taxes within and without federal areas. (Hearing Before a Subcommittee of the Committee on Finance of the Senate, 76th Cong., 3d Sess. on H. R. 6687 (Apr. 23, 1940). See also, S. Rep. No. 1625, 76th Cong., 3d Sess. 10429 (1940).

In the instant case the court below held that the tax imposed under the Kansas Liquor Control Act (Kan. G. S. 1949, 41-501) was "* * * a liquor sales tax within the meaning of the Buck Act." (app. B, p. 14). The legislature of Kansas by enacting the Kansas Liquor Control Act intended to tax and regulate intoxicating liquor within the state. *State* v. *Larkin*, 173 Kan. 112, 244 P.2d 686 (1952).

No question would have arisen concerning the validity of the state's seizure in the instant case if the liquor shipment involved had been consigned to a member of the armed services residing in the city of Leavenworth, Kansas, or any area over which Kansas exercised legislative jurisdiction. Kan. G. S. 1949, 41-407, prohibits transportation into the state, with certain exceptions not applicable herein, of unstamped liquor. Petitioners contend that the effect of the Buck Act was to dissolve the federal enclaves within Kansas permitting Kansas to apply certain tax laws to transactions previously insulated from state taxation. (This contention was adopted by Bratton, C. J.; dissenting.) Because of the absence of authoritative comment upon the inter-relationship of the Commerce Clause, the Twenty-first Amendment and the Buck Act petitioners contend that the decision below should be reviewed by this Court.

2. The Assertion of State Authority to Tax Liquor Shipments Originating Without the State, Consigned to Individuals Residing in Federal Enclaves, Raises Important Questions in the Area of Federal-State Relationships.

The national scope of federal-state jurisdictional conflicts arising out of the existence of federal enclaves is forcefully developed in the Report of the Inter-departmental Committee for the Study of Jurisdiction over Federal Areas Within the States (the Report) (Parts I and II,

April, 1956, June, 1957, U. S. Government Printing Office). The Committee publishing the report was formed December 15, 1954, on the recommendation of the Attorney General of the United States. The purpose of the Committee was to undertake a study with a view toward resolving problems arising out of the jurisdictional status of federally owned areas (Comm. Rep., Part I, p. VII). (Kansas, Virginia and California were the three representative states chosen by the Committee for extensive investigation.)

The Committee canvassed all of the State Attorneys General with reference to problems arising out of the existence of federal enclaves. The following excerpt from the Committee's report relates in part to alcoholic beverages:

> "*Other problems*—Numerous problems of criminal jurisdiction, licensing and control of alcoholic beverages * * * were mentioned by attorneys general as arising in areas under the legislative jurisdiction of the United States." (Comm. Rep. Part I, p. 27.)

The alcoholic beverage control question is also discussed in the Report at p. 45, Part I. Federal retrocession under the Buck Act is considered at pp. 186-203, Part II.

The question of the instant case, i.e., the applicability of the Buck Act to liquor shipments consigned to individuals residing within a Federal enclave is the concern of state officials in each state containing one or more federal areas. (Assuming that the state places a sale or use tax on intoxicating liquors.)

The national character of the problems arising out of "state liquor tax—federal enclave" situations is accented by the conflicts in the state and federal agency rulings noted below:

Georgia: 1952-3 Ops. Att'y Gen. 445 (1953):

> Taxes and warehouse charges may be collected on liquor shipped from without the state notwithstanding the fact that the liquor is consigned to persons located on a federal military reservation (Opinion based on the Buck Act).

Idaho: 1957 Ops. Att'y Gen. No. 14-6-7:

> Liquor may not be legally shipped to the Mountain Home Air Force Base from without the state unless the containers carry tax stamps of the Idaho State Liquor Dispensary.

The Attorneys General of three states have ruled that a state has no right to tax or regulate liquor imported into an exclusive federal jurisdictional area.

Missouri: Ops. Att'y Gen. (Apr. 26 (1936), Jan. 15, 1940, June 12, 1942).

Connecticut: Ops. Att'y Gen., Oct. 26 (1937).

Ohio: No. 1320 Ops. Att'y Gen. 2255 (1937) *id.* No. 3838 (1954), p. 265.

On the basis of the *Yellow Cab* case, *supra*, the Department of the Army has taken the position that a state has no authority to prohibit the importation of liquors destined for military reservations, Op. J.A.G., Army, 1954/5868 (July 12, 1954), or to require that the liquors so consigned be channelled through state warehouses and subjected to taxes and other charges, *id.* 1953/7206 (Sept. 15, 1953).

Several agency rulings concerning the intoxicating liquor-federal enclave problem appear to have been based upon *Collins* v. *Yosemite Park and C. Co.*, 304 U.S. 518 (1938). This Court held in *Yosemite Park* that a state cannot, with-

out express reservation of authority to do so, enforce in an area under federal legislative jurisdiction the regulatory features of its Alcoholic Beverage Control Act. The *Yosemite Park* holding has been interpreted by the Department of the Navy as authority for ruling that the provisions of the Virginia Beverage Control Act do not apply to sales on lands under the exclusive jurisdiction of the United States. Op. J.A.G., Navy, JAG: II: 1: RLB: imz (Nov. 5, 1952). The Department of the Army has expressed the view that state law pertaining to the methods of dispensing liquor and the various restrictions placed on tavern keepers have no application on areas over which the United States exercises exclusive jurisdiction. Op. J.A.G., Army, 414.1 (May 17, 1940) (Citations of the rulings set out herein are, in part, found in the Report of the Interdepartmental Committee, pp. 182, 183, Notes 12, 13, Part II).

The above opinions of the Attorneys General of Idaho and Georgia, upholding the authority of the state to tax liquor shipments into the enclave were written after Congress had effected a Federal retrocession through the Buck Act. The contra opinions were based either on *Yellow Cab* or the *Yosemite Park* case, *supra*, both of which were not Buck Act cases.

3. The Court Below in Holding That the Liquor Shipment Was Not Subject to the Kansas Liquor Tax Relied on Authorities of This Court Which in No Way Considered the Effect of Federal Retrocession under the Buck Act. Petitioners Contend That Because the Instant Case Is Inherently a Buck Act Case, Such Reliance Constitutes a Misinterpretation of the Decisions of This Court.

The court below commented that "in many respects the facts of this case (the instant case) are similar to those

in *Collins* v. *Yosemite Park and Curry Company*, 304 U.S. 518" (app. B, p. 15).

Petitioners acknowledge a degree of similarity between the cases. However, petitioners contend that the non-existence of the Buck Act at the time *Yosemite* was before this Court negates the use of the *Yosemite Park* case as persuasive authority in determination of the instant case.

The *Yosemite Park* case held that a reservation by California of the right to tax the sale of liquor did not include the right to enforce the regulatory features of California's Alcoholic Beverage Control Act in a national park. The *Yosemite Park* case was handed down on May 31, 1938. The Buck Act was not enacted until 1940. Act of Oct. 9, 1940, 54 Stat. 1059, 4 U.S.C. 105-110. The question of federal retrocession for taxation purposes was not before this Court in the *Yosemite Park* case.

The Court below also relied on *Johnson* v. *Yellow Cab Transit Co.*, 321 U.S. 383 (1944). Quoting from their opinion in *Yellow Cab*, the Court below commented that:

> "* * * the * * * 'state has no power to forbid the transportation in interstate commerce of intoxicating liquor through its territorial boundaries,' and that a state '* * * has no jurisdiction to require or grant permits for the importation of intoxicating liquors into * * *' a reservation." 137 F. 2d at 274 (app. B, p. 17).

Yellow Cab was not a Buck Act case. Federal retrocession pursuant to "The Buck Act", controls the disposition of the issues before this Court. By virtue of the retrocession of the Buck Act, the transportation in the instant case was *into* Kansas rather than *through* Kansas. The Buck Act was not applied in *Yellow Cab*. The distinction between *Yellow Cab* and the instant case is further pointed

up by the observation of Judge Bratton of the Tenth Circuit (concurring in *Yellow Cab*):

> "And by act of Congress, the United States consented that the several states be empowered to extend their income, sales, and use tax to federal areas within such states. 54 Stat. 1059, 4 U.S.C.A., §§ 13, 14. Aside from these exceptions, *none of which has any material bearing here*, the laws of Oklahoma as state laws do not have any force or effect within the Reservation." 137 F.2d at 278 (Emphasis supplied).

Petitioners contend that the cardinal issue in the instant case concerns the proper interpretation of the Buck Act. A determination of the instant case by the Court below in part on the authority of the *Yosemite Park* case and in part on the authority of *Yellow Cab* will not afford the degree of clarification required for the proper administration, within federal areas, of state liquor tax laws.

The Court below has held that the tax imposed by Kansas under the liquor control act was a tax within the meaning of the Buck Act (app. B, p. 15). *Howard* v. *Commissioners of Louisville*, 344 U.S. 624 (1953), was cited by the court as persuasive authority for such a holding.

In *Howard*, the plaintiffs were employees of the United States Naval Ordnance Plant located in an area of exclusive federal jurisdiction within the state of Kentucky. Plaintiffs sued in the state court for a declaratory judgment that a license tax on the privilege of working in the city of Louisville measured by a percentage of all salaries, wages and commissions earned within the city was not applicable to them. The defendants' demurrer was overruled and the collection of the tax enjoined. The Kentucky Court of Appeals reversed, 248 S.W.2d 340 (Ky. 1952), and judgment was entered for the defendants. The Court of Appeals then affirmed, 249 S.W.2d 816 (Ky. 1952). On

appeal to this Court, the Court of Appeals' decision was affirmed, two Justices dissenting.

The majority opinion in *Howard* constitutes a liberal construction of the Buck Act. To construe the Buck Act strictly would be to frustrate the intent of Congress. The liberal construction afforded to the Buck Act in the *Howard* case is indicative of the view the Court would take in construing the section of the act which applies to sales and use taxes (4 U.S.C., § 105).

The opinion below has created an anomalous situation, *i.e.*, (1) the Kansas tax on intoxicating liquor is within the meaning of the Buck Act, (2) the purpose of the Buck Act was to dissolve the enclave for certain taxation purposes, (3) the court below has characterized the instant shipment as one in interstate commerce. Petitioners contend that such a characterization is unfounded. If the Buck Act applies, and the court below held that it did, the enclave for certain taxation purposes is dissolved; consequently the shipment, lacking enclave protection, is into and not through Kansas.

Petitioners contend that federal-state jurisdictional conflicts arising out of the existence of federal enclaves should be considered in the light of present day realities.

This Court has observed and commented upon the dilution of the concept of exclusive federal legislative jurisdiction. In the *Howard* case, *supra*, Mr. Justice Minton speaking for the Court, stated:

> "• • • The fiction of a state within a state can have no validity to prevent the state from exercising its power over the federal area within its boundaries, so long as there is no interference with the jurisdiction asserted by the Federal Government. The sovereign rights in this dual relationship are not antagonistic.

Accommodation and cooperation are their aim. It is friction, not fiction, to which we must give heed." 344 U.S. at 627.

Under the facts of the instant case the respondent is insulated from the effect of Kansas law merely because the consignee of the shipment resided within the federal enclave. The purpose of the Buck Act was to negate federal enclave preference. Under the opinion below the Buck Act applies and yet it does not apply. Petitioners contend that it was error for the court below to determine the instant case on the authority of decisions of this court in which the Buck Act was not considered.

4. For Purposes of Uniformity in the Administration of Criminal Laws Throughout the Individual States, the Assimilative Crimes Act, 18 U.S.C., § 13, Should Be Reviewed by This Court. The Effect of the Act upon Equitable Actions to Enjoin the Application of State Penal Measures to Individuals Associated with a Federal Enclave Should Receive Clarification.

Petitioners urged in the court below the applicability of the Assimilative Crimes Act (hereinafter referred to as the act) to the instant case. Petitioners' theory was based on the fact that the act adopts state law as federal criminal law when the Federal Criminal Code has not defined a certain offense or provided for its punishment. *United States v. Press Publishing Co.*, 219 U.S. 1 (1911). Under the act, illegal liquor traffic statutorily proscribed by the state of Kansas would also be illegal under the Federal Criminal Code. Consequently the federal district court, sitting in equity in the instant case should not have condoned an apparent violation of federal law by enjoining the state from seizing the liquor involved in the instant shipment.

A contention similar to the one petitioners urge herein was made in the *Yellow Cab* case, 321 U.S. 383 (1944).

This Court in *Yellow Cab* invalidated the seizure of liquor by Oklahoma on the basis that no state law purported to prohibit or regulate a shipment into or through the state to the enclave.

This Court left unanswered the question whether the act brought about an adoption of state law in the enclave which might have the effect of making illegal the transactions involved. Justices Frankfurter and Roberts, dissenting, were of the opinion that the act adopted state regulatory statutes for the enclave and made illegal the transactions involved in *Yellow Cab*.

It appears, however, that the opinion of the Court in *Yellow Cab* cannot be construed, in view of the clear language of avoidance used by the majority, as holding that the act does not apply to state regulatory statutes. This question remains unsettled.

> "Were we to decide that the assimilative crimes statute is not applicable to this shipment of liquors, we would, in effect, be construing a federal criminal statute against the United States in a proceeding in which the United States has never been represented. And, on the other hand, should we decide the statute outlaws the shipment, such a decision would be equivalent to a holding that more than 200 Army Officers, sworn to support the Constitution, had participated in a conspiracy to violate federal law." 321 U.S. at 391.

With reference to the act, the *Yellow Cab* decision merely held that, on the facts of the case, the carrier acted in good faith and neither the United States, the War Department, nor the army officers being represented in the litigation, relief would not be denied on the theory that federal laws may in consequence be violated.

At the time the respondent herein filed his petition requesting injunctive relief in the federal district court be-

low, proceedings concerning the seized liquor were pending in the District Court of Leavenworth County, Kansas, for violation of the "two-quart" law. Kan. G. S. 1949, 41-407 (app. A). The instant case therefore presents an entirely different problem from that in *Yellow Cab* with reference to the commission of a crime.

State criminal statutes in the nature of criminal regulations have been adopted under the act in *United States* v. *Watson*, 80 F. Supp. 649 (E. D. Va. 1948) (reckless driving), and *United States* v. *Sosseur*, 181 F. 2d 873 (7th Cir. 1950) (possession of slot machines). However, no reported decision appears to exist upholding the effectiveness, under the act, of a primarily regulatory statute containing criminal provisions.

Petitioners are aware that state law enforcement officials patently can not enforce the act's provisions. However, if state regulatory criminal provisions are applicable to the federal enclave by adoption under the assimilative Crimes Act, federal courts through the arm of equity should not be permitted to "aid in the consummation of what appears to be a violation of the criminal code of the United States." 321 U.S. at 393 (Mr. Justice Frankfurter, dissenting).

CONCLUSION.

For the foregoing reasons this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

JOHN ANDERSON, JR.,
Attorney General, State of Kansas,
Counsel for Petitioner.

January 20, 1958.

APPENDIX A.

4 U.S.C., §§ 105-110.

§ 105. *State and so forth, taxation affecting Federal areas; sales or use tax.*—(a) No person shall be relieved from liability for payment of, collection of, or accounting for any sales or use tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a Federal area; and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to sales or purchases made, receipts from sales received, or storage or use occurring, after December 31, 1940 (July 30, 1947, ch. 389, § 1, 61 Stat. 641).

§ 106. *Same; income tax.*—(a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940 (July 30, 1947, ch. 389, § 1, 61 Stat. 641).

§ 107. *Same; exception of United States, its instrumentalities, and authorized purchases therefrom.*—(a) The provisions of sections 105 and 106 of this title shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof, or the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser.

(b) A person shall be deemed to be an authorized purchaser under this section only with respect to purchases which he is permitted to make from commissaries, ship's stores, or voluntary unincorporated organizations of personnel, any branch of the Armed Forces of the United States, under regulations promulgated by the departmental Secretary having jurisdiction over such branch. July 30, 1947, ch. 389, § 1, 61 Stat. 641, amended Sept. 3, 1954, ch. 1263, § 4, 68 Stat. 1227.

§ 108. *Same; jurisdiction of United States over Federal areas unaffected.*—The provisions of sections 105-110 of this title shall not, for the purposes of any other provision of law be deemed to deprive the United States of exclusive jurisdiction over any Federal area over which it would otherwise have exclusive jurisdiction or to limit the jurisdiction of the United States over any Federal area (July 30, 1947, ch. 389, § 1, 61 Stat. 641).

§ 109. *Same; exception of Indians.*—Nothing in sections 105 and 106 of this title shall be deemed to authorize the levy or collection of any tax on or from any Indian not otherwise taxed (July 30, 1947, ch. 389, § 1, 61 Stat. 641).

§ 110. *Same; definitions.*—As used in sections 105-109 of this title—

(a) The term "person" shall have the meaning assigned to it in section 3797 of title 26.

(b) The term "sales or use tax" means any tax levied on, with respect to, or measured by, sales, receipts from sales, purchases, storage, or use of tangible personal property, except a tax with respect to which the provisions of section 104 of this title are applicable.

(c) The term "income tax" means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts.

(d) The term "State" includes any Territory or possession of the United States.

(e) The term "Federal area" means any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency, of the United States; and any Federal area, or any part thereof, which is located within the exterior boundaries of any State, shall be deemed to be a Federal area located within such State (July 30, 1947, ch. 389, § 1, 61 Stat. 641).

KANSAS LIQUOR CONTROL ACT (Ch. 41, Kansas G.S., 1949)

Article 1—GENERAL PROVISIONS

Article 2—ALCOHOLIC BEVERAGE CONTROL DIRECTOR AND BOARD OF REVIEW

Article 3—LICENSING AND RELATED PROVISIONS

Article 4—BONDED WAREHOUSES AND RELATED PROVISIONS

41-407. "*Evasion of liquor tax; acts forbidden; penalty.* It shall be unlawful for any person (1) to evade, or attempt to evade, the payment of tax or duty on any such

alcoholic liquor, in any manner whatever, and upon conviction thereof, in addition to the penalty prescribed for the violation of this act, such person shall forfeit and pay, as a part of costs in such action, double the amount of the tax so evaded or attempted to be evaded; (2) to have in his possession any cask or package of such liquor, without having thereon each mark and stamp required therefor by law; and such cask or package not having the mark or stamp as aforesaid, shall be forfeited to the state of Kansas; (3) to affix or cause to be affixed to or upon any cask or package containing or intended to contain such liquor, any imitation stamp or other engraved or printed stamp or photographed label, device or token, whether the same be designed as a trademark, caution, notice, caution, or otherwise, and which shall be in the similitude or likeness of, or shall have the resemblance or general appearance of any tax or revenue stamp required by the laws of the state of Kansas or the rules of the director to be affixed to or upon any cask or package containing such liquor; or (4) to remove from any bonded warehouse at any time other than after sunrise and before sunset any such liquor, or any cask or package containing such liquor: *Provided*, That nothing contained in this section shall make it unlawful for any person to possess or transport not to exceed two quarts of alcoholic liquor for the personal use of the possessor, his family and guests upon which the tax imposed by this act has not been paid or on the containers of which each mark and stamp required by this act has not been affixed: • • •" [The two quart exemption set out in the proviso was repealed in 1957 Kan. G. S., 1957 Supp. 41-407].

41-408. *"Common carriers authorized to carry liquor, when; bond; restrictions; exemptions.* Any common carrier of merchandise owning or operating any railroad, express company, bus truck or other transportation lines or

routes for the transportation of merchandise in the state of Kansas, upon application and filing of a bond in form and penalty and with such sureties as may be approved by the director, may be designated as a carrier of such alcoholic liquor, for the final release of which liquor, from a bonded warehouse in the state of Kansas, a permit has not been issued: *Provided*, The consignee shall be some manufacturer or distributor maintaining a bonded warehouse for such liquor within the state of Kansas; *And provided further*, That nothing in this section shall be construed to prevent or restrict any common carrier from transporting in intrastate commerce any such liquor without giving the bond aforesaid where the consignor is a bonded warehouse of the state of Kansas and the consignee is a licensed retail liquor dealer in this state. Any such liquor arriving at a point of entry in the state of Kansas may be entered, under such rules and regulations as the director may prescribe, for transportation in bond to any bonded warehouse in the state of Kansas."

Article 5—GALLONAGE TAX AND TAX STAMPS OR CROWNS

41-501: *"Manufacturers and wholesale distributors; rates of tax; exemptions; collection and disposition of tax.* (1) As used in this section, the word "gallon" means "wine gallon."

(2) For the purpose of raising revenue a tax is imposed upon the privilege of engaging in business as a manufacturer or as a distributor at wholesale at a rate of ten cents per gallon on all beer containing more than 3.2 percent of alcohol by weight; fifteen cents per gallon for wine and other dilute alcoholic beverages containing fourteen percent or less of alcohol, by volume; forty cents per gallon for wine and other dilute alcoholic beverages contain-

ing more than fourteen percent of alcohol by volume; one dollar per gallon on alcohol and spirits of one hundred proof or less; and two dollars per gallon on alcohol and spirits of more than one hundred proof manufactured and sold by such manufacturer or imported for sale in this state by such distributor at wholesale in the course of such business. Said tax shall be paid only once and shall be collected and paid to the director as provided in this act.

(3) Manufacturers or distributors at wholesale of alcoholic liquors shall be exempt from the payment of such gallonage tax imposed on such liquors, upon satisfactory proof, including bills of lading furnished to the director by affidavit or otherwise as the director may require, that such liquors were manufactured in this state but were shipped out of the state for sale and consumption outside the state of Kansas.

(4) Wines manufactured or imported solely and exclusively for sacramental purposes and uses shall not be subject to the tax provided in this section.

(5) The tax provided for by this section is not imposed upon any alcohol, or wine, whether manufactured in or imported into this state when sold to a "nonbeverage user", as defined in section 2 (41-102) of this act, licensed by the state for use in the manufacture of any of the following when they are unfit for beverage purposes: Patent and proprietary medicines and medicinal, antiseptic, and toilet preparations; flavoring extracts and syrups and food products; scientific, industrial and chemical products; or for scientific, chemical, experimental or mechanical purposes; nor is the tax imposed upon the privilege of engaging in any business of interstate commerce or otherwise, which business may not, under the constitution and statutes of the United States, be made the subject of taxation by this state.

(6) The tax imposed by this section shall be in addition to all other occupation or privilege taxes imposed by the state of Kansas or by any municipal corporation or political subdivision thereof: *Provided*, That retail sales of alcoholic liquor and beer shall not be subject to the tax imposed by the Kansas retailer's sales tax act but shall be subject to the enforcement tax provided for in this act: *Provided further*, That notwithstanding any ordinance to the contrary, no city shall impose an occupation or privilege tax on the business of any person, firm or corporation licensed as a manufacturer, distributor, or nonbeverage user under this act and doing business within the boundaries of such city in any sum which exceeds the amount of the license fee required to be paid under this act to obtain such license; nor shall any city impose an occupation or privilege tax on any retailer licensed under this act in an amount in excess of the maximum amount specifically provided in this act.

(7) The director is hereby directed and authorized to collect the taxes herein imposed and to account for and turn over to the state treasurer at least once each week all money collected as herein provided and the state treasurer shall credit ninety percent (90%) of the same to the general fund of the state and the remaining ten percent (10%) shall be credited to the liquor control administration fund.

(8) If any alcoholic liquor manufactured in or imported into this state is sold to a licensed manufacturer or distributor of this state to be used solely as an ingredient in the manufacture of any beverage for human consumption, the tax imposed upon such manufacturer or distributor shall be reduced by the amount of the taxes which have been paid as to such alcoholic liquor so used under this act."

41-502. "*Tax stamps or crowns to be affixed to packages.* Payment of the tax provided for in section 53 shall be evidenced by tax stamps or crowns to be affixed to each original package of alcoholic liquor for use in this state. It is the duty of each manufacturer and distributor at wholesale before delivery of any alcoholic liquor to a licensed purchaser to affix a stamp or crown firmly to each original package at the rate of gallonage provided for in said section, in such amounts as the contents of each original package bears to one gallon, subject to all the conditions of sections 44 to 52 (41-401 to 41-409): *Provided*, That the director may, by rule, require that such tax stamps or crowns be affixed to each original package of alcoholic liquor at the place where such original package is manufactured or filled; *And provided further*, That the director may also, by rule, permit the cancellation of a tax stamp or crown by the distributor, and may permit credit replacement to be issued to such distributor for stamps or crowns so canceled or destroyed: *Provided*, That in the case of wine, the director may authorize such stamps to be affixed to the shipping container in lieu of the original package and if he shall so authorize, then the provisions of this act making it unlawful to possess, sell, deliver, distribute, transport or use alcoholic liquor upon the original packages of which such stamps shall not have been affixed or shall not be affixed, shall, in the case of wine, apply to the shipping containers and not the original packages."

Article 6—MANUFACTURER'S AND WHOLESALER'S RECORD AND REPORT

Article 7—CERTAIN PROHIBITED ACTS AND PENALTIES

Article 8—MISDEMEANORS AND NUISANCES

Article 9—GENERAL PENALTY PROVISIONS

Article 10—PROSECUTION AND ENFORCEMENT

Article 11—MISCELLANEOUS PROVISIONS

Article 12-26—(BLANK)

Article 27—CEREAL MALT BEVERAGES

APPENDIX B.

Opinion of the United States Court of Appeals.

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

September Term, 1957

W. E. MURPHY, Director of Alcoholic Beverage Control; JOHN ANDERSON, JR., Attorney General of the State of Kansas; ARDEN RHYNE, Sheriff of Leavenworth County, Kansas; and JAMES R. FUSSELL, County Attorney of Leavenworth, County, Kansas,
Appellants,

vs.

W. B. LOVE, an individual doing business as the LOVE TRANSFER COMPANY, Weston, Missouri,
Appellee

} Number 5585

Appeal From The United States District Court
For The District of Kansas

John Anderson, Jr., Attorney General, and Eugene W. Davis, Counsel for Alcoholic Beverage Control (Paul E. Wilson, Ass't Attorney General, and Fred N. Six, Ass't Attorney General, were with them on the brief) for Appellants:

Homer Davis for Appellee.

Before BRATTON, Chief Judge, and HUXMAN and BREITENSTEIN, United States Circuit Judges.

HUXMAN, Circuit Judge.

This is an appeal from a mandatory injunction issued by the United States District Court for the District of Kansas permanently and perpetually enjoining and restraining appellants from interfering with appellee Love in the transportation of liquor from Missouri to the Fort Leavenworth Military Reservation, and for the return of liquor seized from Love by appellants. Jurisdiction is predicated on the ground that interstate commerce is involved.

On October 5, 1955, Agents of the Kansas Alcoholic Beverage Control intercepted at the western approach of the new Municipal Leavenworth Toll Bridge a truck owned by Love which was carrying 66 fifths of alcoholic liquor consigned from the Austin Liquor Store at Beverly, Missouri, to Major B. C. Snow, Jr., residing on the Military Reservation at Fort Leavenworth. The liquor was not marked or stamped with Kansas revenue stamps evidencing payment of the Kansas gallonage tax, but was stamped evidencing proper payment of Missouri gallonage tax and Missouri sales tax. The liquor was purchased by the consignee from the Austin Liquor Store in Beverly, Missouri, and was delivered to the common carrier for transportation to consignee's residence on the Military Reservation.

Subsequent to the seizure, Love filed his petition in the Federal Court, requesting a mandatory injunction to enjoin and restrain appellants from further interfering with such liquor shipments to Fort Leavenworth and for the return of the seized liquor. Trial was had to the Court. At the conclusion of the trial, the Court made detailed

findings of fact and conclusions of law and, based thereon, entered the judgment challenged in this appeal.

Many of the Court's findings of fact are not challenged and need not be considered. The pertinent findings and conclusions of law necessary to consider are as follows: The Court found:

> No. 14. That the arrest and seizure took place at a point within the jurisdiction of the State of Kansas.
>
> No. 18. That the shipment in question constituted an interstate shipment under the Commerce Clause.
>
> No. 19. That no taxes were due or collectible by the State of Kansas on the liquor seized and involved in this action.

Based upon these findings, the Court concluded as a matter of law:

> No. 2. That the arrest and seizure took place within the jurisdiction of Kansas.
>
> No. 3. That the seizure constituted an interference with and a burden upon an interstate shipment and was without legal authority.
>
> No. 4. That the State of Kansas or its agents have no authority to levy or collect any tax on the liquor seized.

Eight assignments of error are urged for reversal, but in the main they present but one central question, and that is whether Kansas was empowered to stop this interstate shipment of liquor from Missouri to the Fort Leavenworth Military Reservation because the shipment did not have attached Kansas liquor revenue stamps. It is without dispute that military reservations, such as we have here, are separate entities and do not constitute a part of the state in which they are located for general jurisdictional pur-

poses.[1] So also it must be conceded that the seizure of this shipment is an interference with interstate commerce and constituted a burden thereon which the State may not impose, absent statutory authority authorizing the same.

Kansas does not by statute prohibit the importation of liquor into the State and, of course, may not prohibit the transportation in interstate commerce of intoxicating liquor through its territorial boundaries. Under reasonable regulations and for permissible purposes, it may control the interstate transportation of liquor through its territorial boundaries.[2] Whether it has done this is the crux of this case and requires a consideration of the Kansas Liquor Control Act of 1949.[3]

The Kansas Liquor Control Act sets up a comprehensive scheme for liquor control from the time of manufacture or importation into the State to the ultimate sale at retail and also provides for the collection of revenue thereon. The provisions necessary for consideration may be generally summarized as follows: The statute provides for the licensing of distributors and retailers and provides that a licensed distributor may sell only to another licensed distributor or to a licensed retailer; that no distributor may sell or deliver alcoholic liquor other than to a person authorized to receive the same; and that no licensed retailer may purchase or receive alcoholic liquor from any source except from a licensed distributor, having a place of busi-

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[1]*Pacific Coast Dairy* v. *Dept. of Agriculture of California*, 318 U.S. 285; *Surplus Trading Co.* v. *Cook*, 281 U.S. 647; *Benson* v. *United States*, 146 U.S. 325; *Ft. Leavenworth RR. Co.* v. *Lowe*, 114 U.S. 525.

[2]*Johnson* v. *Yellow Cab Co.*, 321 U.S. 383; *Carter* v. *Virginia*, 321 U.S. 131; *Duckworth* v. *Arkansas*, 314 U.S. 390.

[3]G.S. 1949, Chapter 41, as amended.

ness in Kansas.[4] Section 41-501 of the Act provides that for the purpose of receiving revenue a tax is imposed on the privilege of engaging in business as a manufacturer or as a distributor at wholesale.[5]

Whether Kansas under the above statute may collect a liquor tax on alcoholic beverages bought and sold on the Reservation requires first a consideration of the Act of the Kansas Legislature ceding jurisdiction over the Fort Leavenworth Military Reservation to the Federal Government and secondly of the Buck Act.[6] It is well established by the decisions that a State may attach reservations to an Act ceding territory to the Federal Government and may thereafter exercise the Governmental functions so reserved on such territory.[7]

By Chapter 66 § 1 of the Laws of 1875, Kansas ceded exclusive jurisdiction of the Fort Leavenworth Military Reservation to the United States, reserving only the right to serve criminal and civil process thereon and also reserving the right "to tax the property and franchises of any railroad, bridge, or other corporations within the boundaries of such lands." Looking to the ceding act, no rights were reserved to levy or collect such taxes as are involved herein.

If such power exists, it must be sought and found in the Buck Act of 1940. Section 105(a) of the Act gives the state the right to levy and collect sales and use taxes with

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[4]The Act contains like provisions applying to wholesalers or manufacturers.

[5]The tax levied is a gallonage tax and varies with the different kinds of liquor.

[6]4 U.S.C.A., § 105, *et seq.*

[7]*Collins v. Yosemite Park & Curry Co.*, 304 U.S. 518; *Ft. Leavenworth R.R. Co. v. Lowe*, 114 U.S. 525; *Arlington Hotel Company v. Fant*, 278 U.S. 439; *United States v. Unzeuta*, 281 U.S. 138.

respect to the sale or use of property where the transactions in whole or in part occurred on a reservation. Section 110(b) provides that "The term 'sales or use tax' means any tax levied on, with respect to, or measured by, sales, receipts from sales, purchases, storage, or use of tangible personal property * * *." Appellee makes a strong argument, and not without some basis therefor, that the Kansas Liquor tax does not fall within this definition. It is pointed out that by the plain language of the statute the tax is a privilege tax for the privilege of doing business and is, therefore, not one of the taxes the State may collect under the Buck Act.

It is true that the Kansas Act specifically states that the "tax is imposed upon the privilege of engaging in business as * * *" a distributor of liquor. Why Kansas saw fit to state that the liquor tax was a privilege tax for the privilege of doing business is not clear. It is apparent, however, that the tax is a revenue tax. It is so described. It is also clear that it is levied with respect to sales and the amount of tax due is measured by the amount of liquor sold. It is not a retail liquor tax since it is not exacted from the retail purchaser of liquor. It is exacted only from the distributor. He alone must pay the tax. In fact, so far as this case is concerned, he is the only one who can pay it. But it is immaterial whether it is a retail sales tax or a distributor's liquor sales tax. It is in our opinion a liquor sales tax within the meaning of the Buck Act.

With respect to the designation of the Kansas tax as a privilege tax the case in many ways is similar to *Howard* v. *Commissioners*, 344 U.S. 624, where the question was whether a City of Louisville tax, called an occupation tax, was nonetheless an income tax, bringing it within the provisions of the Buck Act. For taxing purposes, the City of Louisville sought to levy an occupation tax measured by

earnings upon employees employed upon a federal enclave within the City of Louisville. The Supreme Court held that the tax was an income tax, measured by the amount of income, notwithstanding its designation as an occupation or privilege tax and was, therefore, collectible under the Buck Act.

We agree with appellants' contention that a gallonage tax may under the Buck Act be imposed upon liquor shipments to persons residing on the Military Reservation and collected from them. The difficulty is that Kansas has not by statute or regulation provided for the collection of liquor taxes with respect to liquor purchased on the Reservation, or purchased in states other than Kansas, and shipped in interstate commerce to the purchaser on the Reservation. Kansas does not seek to collect a tax from the purchaser of this liquor. In fact, it concedes that under its law there is no way in which the purchaser could pay the Kansas tax. The effect of what it seeks to do by its laws and regulations is to stop entirely all interstate transportation of liquor to inhabitants of the Reservation and force them to come into Kansas and buy all liquor, to be consumed on the Reservation, from a licensed retail liquor dealer in Kansas. It is one thing to say that Kansas may by statute and regulations promulgated thereunder provide for the collection of its liquor tax on liquor going to the Reservation or sold on the Reservation. It is quite another thing to say that it may control or regulate the purchase of liquor on the Reservation or to entirely prohibit shipment in interstate commerce of liquor purchased outside Kansas for delivery to the Reservation.

In many respects the facts of this case are similar to those in *Collins* v. *Yosemite Park and Curry Company*, 304 U.S. 518. Involved there was the Yosemite National Park enclave in California. The State Act ceding the enclave ter-

ritory to the Federal Government reserved "the right to tax persons and corporations, their franchises and property on the lands included in said parks." California's Liquor Control Act was much like that of Kansas, in that it required licensed wholesalers and retailers and the purchase of liquor stamps by them. California sought to compel liquor operators in the Park to take out licenses and pay license fees. The Supreme Court pointed out that since all California reserved was the right to collect taxes it had no power to subject business done in the Park to the regulatory provisions of its Liquor Control Act. The Court held that California had the right to use means to force a collection of any tax due on transactions carried on in the Park but held that "* * * it seems clear that the licenses required by § 5 go beyond aids to the collection of taxes and are truly regulatory in character." The Court further said, "As there is no reservation of the right to control the sale or use of alcoholic beverages, such regulatory provisions as are found in the Act under consideration are unenforceable in the Park."

The Act of 1875 ceding the Fort Leavenworth Military Reservation to the United States did not reserve the right to control or regulate business on the Reservation. The Buck Act does not give the State such power. Under it at most the State can collect taxes on liquor sold to or on the Reservation. The Buck Act gave the State no right to regulate or control business done in interstate commerce with persons on the Reservation. All such power remained in the Federal Government. 4 U.S.C.A., § 109, specifically provides that Sections 105 to 110 shall not otherwise [than for the collection of taxes] deprive the United States of its exclusive jurisdiction over the Reservation.

Kansas may by statute and appropriate regulations provide for the collection of liquor taxes due under its laws

and collectable under the Buck Act on liquor sales to or on the Reservation. Such laws or regulations would not constitute an unreasonable burden upon interstate commerce. But, as pointed out, Kansas has not done this since its laws provide that the tax may be paid only by persons who are regulated under the Kansas Act.* Since Kansas does not have territorial jurisdiction to regulate liquor in the Federal enclave it has no authority to impose revenue measures concerning liquor which are inseparable from such regulatory aspects of the Act. The effect of what it seeks to do by the regulatory provisions of its law is to make impossible the purchase or sale of liquor on the Reservation, or importation of liquor in interstate commerce into the Reservation. Such a construction would not only place a burden on interstate commerce of liquor to the Reservation but would stop it entirely. In *Johnson* v. *Yellow Cab Transit Company*, 137 F.2d 274, we said that the "* * * state has no power to forbid the transportation in interstate commerce of intoxicating liquor through its territorial boundaries," and that a state "* * * has no jurisdiction to require or grant permits for the importation of intoxicating liquors into * * *" a reservation.

The contention that injunctive relief should be denied because appellee came into Court with unclean hands needs no extended discussion. It is argued that the Assimilative Crimes Act makes the criminal provisions of the Kansas Liquor Control Act applicable to military reservations and hence the issuance of the injunction aids in the commission of a violation of the Criminal Code of the United States. Since there is no state law prohibiting the importation in interstate commerce of liquor into the Reservation, there is no violation of a Kansas criminal statute. At most

*See G.S. 1949, 41-504.

there was a violation of the provision making it unlawful to have possession in Kansas of liquor not bearing the Kansas revenue stamps. But liquor passing across Kansas in interstate commerce does not come to rest in Kansas and, therefore, the law making it unlawful to have in possession in Kansas liquor without Kansas revenue stamps attached thereto has no application to such shipments.

AFFIRMED.

NUMBER 5585

BRATTON, Chief Judge, dissenting:

The Twenty-first Amendment to the Constitution of the United States, and the Act of August 27, 1935, 49 Stat. 877, 27 U.S.C.A., § 122, each prohibit the transportation or importation of intoxicating liquor into a state in violation of the laws of such state. A state is free to forbid the importation of intoxicating liquor in interstate commerce into its territorial boundaries, or it may enact regulatory provisions for such importation. *State Board* v. *Young's Market Co.*, 299 U.S. 59; *Mahoney* v. *Triner Corp.*, 304 U.S. 401. And exercising its prerogatives in that field, the State of Kansas in 1949 enacted a liquor control act. Chapter 41, General Statutes of Kansas, 1949. The purpose of the act was to regulate and tax the manufacture, sale, possession, and transportation of intoxicating liquor within the state. *State* v. *Larkin*, 173 Kan. 112, 244 P. 2d 686.

The act imposes a gallonage tax upon intoxicating liquor. Payment of the tax is evidenced by tax stamps or crowns to be affixed to the original package, K.G.S., 1949, § 41-502. It is unlawful for a person to have liquor in his possession without the stamp thereon required by law; but one may possess or transport not to exceed two quarts for the personal use of the possessor, his family, and his guests

§ 41-407. A common carrier is not permitted to transport into the state liquor upon which the tax has not been paid, except for delivery to manufacturers, dealers, or jobbers who maintain a bonded warehouse within the state § 41-408. And under the act, particularly § 41-407, unstamped liquor is prima facie contraband subject to seizure and confiscation. Therefore it is clear that if the non-tax-paid shipment in question had been consigned to an individual in Kansas outside of the military enclave of Fort Leavenworth it would have been subject to seizure after coming into the state and before being delivered to the consignee.

The shipment in question was moving to a consignee residing within the military enclave of Fort Leavenworth. And, except as modified by statute, the area within the enclave is under the exclusive jurisdiction of the United States. But it is provided by Act of Congress commonly referred to as the Buck Act that no person shall be relieved of liability for payment of, collection of, or accounting for any sales or use tax levied by any state having jurisdiction to levy such tax on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a Federal area; and that such state shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such state to the same extent and with the same effect as though such area was not within a Federal area. 4 U.S.C.A., § 105. By such act, Congress effected a recession of jurisdiction to the State of Kansas in respect to the laying and collecting of use taxes. With such recession of jurisdiction in effect, the laws of Kansas in respect to the levying and collecting of use taxes upon liquor and in respect to the possession or transportation of liquor upon which the tax has not been paid are in force and effect within the enclave at the fort to the same extent as in other parts of the state. *Howard* v. *Com-*

missioners, 344 U.S. 624; *Commissioners of Sinking Fund* v. *Howard*, 248 S.W.2d 340; *Howard* v. *Commissioners of Sinking Fund*, 249 S.W.2d 816.

The case of *Collins* v. *Yosemite Park and Curry Co.*, 304 U.S. 518, was decided before the enactment of the Buck Act and therefore is without persuasive application here. The case of *Johnson* v. *Yellow Cab Co.*, 321 U.S. 383, was decisively different from this one and does not have the effect of immunizing this shipment of liquor from seizure and confiscation. There, a shipment of liquor was moving from Illinois, through Missouri, into Oklahoma, and thence to a consignee within the military reservation of Fort Sill. But Oklahoma was a dry state. It prohibited the sale of liquor, except for medical purposes. It had no law regulating the taxing or control of liquor within the state. Liquor in Oklahoma was not subject to any state tax. And therefore the Buck Act was completely inapplicable. And the case of *Miller Brothers Co.* v. *Maryland*, 347 U.S. 340, upon which appellee places strong reliance, fails to lend effective support to the judgment of the court below. There, Maryland sought to assert a use tax against a merchant engaged in business in Delaware. Sales of merchandise were made in Delaware to purchasers in Maryland. In some instances, the purchasers received the merchandise at the store in Delaware and transported it into Maryland. In some instances, the deliveries were made by common carrier. But in all instances, the sales were made at the store in Delaware. It was held that the merchant in Delaware was not liable for the use tax under the law of Maryland. The basis for the holding was that the practical and legal effect of the contention of Maryland was to make the vendor in Delaware liable for a use tax due from the purchaser. Here, Kansas was not asserting a use tax against the carrier. It was not attempting to collect a tax from the carrier. It was engaged

in the enforcement of its law in forbidding and making penal the possession and transportation of liquor upon which the tax had not been paid.

It is my view that after the truck passed from Missouri into Kansas, the liquor being transported without the stamps or crowns attached to the original containers or packages as required by the law of Kansas became contraband subject to seizure and confiscation.

I would reverse the judgment.

Judgment of United States Court of Appeals (Tenth Circuit).

Thirty-Third Day, September Term, Tuesday, October 29th, 1957.

Before Honorable Sam G. Bratton, Chief Justice, and Honorable Walter A. Huxman and Honorable Jean S. Breitenstein, Circuit Judges.

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Kansas and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby affirmed.

On December 3, 1957, the mandate of the United States Court of Appeals, in accordance with the opinion and judgment of said court, was issued to the United States District Court.

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No. 741

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957.

W. E. MURPHY, Director of Alcoholic Beverage Control; JOHN ANDERSON, JR., Attorney General of the State of Kansas; ARDEN RHYNE, Sheriff of Leavenworth County, Kansas; and JAMES E. FUSSELL, County Attorney of Leavenworth County, Kansas,
Petitioners,

vs.

W. B. LOVE, an Individual Doing Business As THE LOVE TRANSFER COMPANY, Weston, Missouri,
Respondent.

BRIEF FOR THE RESPONDENT
In Opposition to the Granting of the Petition for a Writ of Certiorari.

HOMER DAVIS,
Manufacturers Bank Bldg.,
Leavenworth, Kansas,
Attorney for Respondent.

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W. B. LOVE, an Individual Doing Business As THE LOVE TRANSFER COMPANY, Weston, Missouri,
Respondent.

BRIEF FOR THE RESPONDENT
In Opposition to the Granting of the Petition for a Writ of Certiorari.

OPINION BELOW.

Copied in Appendix B-Petition for Certiorari.

JURISDICTION.

Petitioner involves Jurisdiction of this Court under 28 U. S. C., Sec. 1254 (1).

QUESTIONS PRESENTED.

1. Did the seizure in this case constitute an interference or burden on an interstate shipment in violation of the commerce clause of the United States Constitution?

2. Does the State of Kansas or its Agents have authority to levy any tax on the liquor seized in this action?

3. Can the State of Kansas or Respondents invoke a Federal Criminal Statute, i. e., The Assimilative Crimes Act, 18 U. S. C., Sec. 13?

STATUTES INVOLVED.

Set out in Appendix in Petitions.

STATEMENT.

The Petitioners' Statement of Facts adequately sets forth the facts.

ARGUMENT.

The real question presented is whether Kansas was empowered to stop this interstate shipment of liquor from Missouri to the Fort Leavenworth Military Reservation because the shipment did not have attached Kansas liquor revenue stamps. No question is raised but that the Military Reservation is a separate entity and constitutes no part of the State for general jurisdictional purposes. See Pacific Coast Dairy v. Dept. of Agriculture of California, 318 U. S. 285. Ft. Leavenworth R. R. Co. v. Lowe, 114 U. S. 525. Therefore it is conceded the seizure in this case is an interference with Interstate Commerce and a burden thereon, unless there is statutory authority therefor.

By Chapter 66, Sec. 1 of the Laws of 1875, Kansas ceded exclusive jurisdiction of the Fort Leavenworth Military Reservation to the United States, reserving only the right to serve criminal and civil process thereon and also the right "to tax the property and franchises of any railroad, bridge, or other corporations within the boundaries of such lands." No rights were reserved to levy or collect such taxes as are here involved.

Does the Buck Act of 1940, Section 105 (a), 4 U. S. C., give the State the right to levy and collect sales and use taxes with respect to the sale or use of property where the transactions in whole or in part occurred on a Reservation? Under Section C of the Compensating Tax, 79-3701, General Statutes of Kansas, 1949, certain exemptions are listed to the use Tax Section C reads:

> "In respect to the use, storage, or consumption of any article of tangible Personal Property, the sale or use of which has already been subjected to a tax equal to, or in excess of, that imposed by this Act, whether under the laws of that (this) State or some other State of the United States."

The above clearly holds that where Missouri taxed this liquor, as it did, by Sales tax and also by Gallonage Tax, that then under the Kansas Compensating Tax Act, and the above exception, the State of Kansas cannot again tax it under the Kansas Compensating Tax Act. Therefore, even if the Federal Buck Act is valid under Kansas law and the admitted facts of this case, the Buck Act does not apply.

The Kansas Gallonage Tax Act, Section 41-501, General Statutes of Kansas 1949, specifically provides that the tax applies to liquor sold by a manufacturer or importer *for sale in Kansas.*

Section 5 of the Act reads in part:

> "Nor is the tax imposed upon the privilege of engaging in any business of interstate commerce, or otherwise, which business may not, under the Constitution and Statutes of the United States be made subject of taxation by the State."

In Boeing Company v. Commission of Revenue and Taxation, 153 K. 712-15, in speaking of this Statute 79-3703, the Court said:

> "G. S. 1939 Supp., 79-3703, provides that a similar tax of 2% shall be collected for the privilege of using within this State any tangible personal property based on its purchase price, *except where a sales tax has been collected thereon pursuant to 79-3603 or otherwise.*"

Section 106 of 4 U. S. C. (Buck Act), in part states:

> " . . . and such state or taxing authority shall have full Jurisdiction and Power to levy and collect any such tax *in any Federal Area* within such State to the same extent and with the same effect as though such area was not a Federal Area."

The power granted is to levy and collect any such tax, "*in any Federal Area,*" not to levy and collect the tax from the common carrier even before the shipment reaches the Federal Area, as Petitioners did in this case. It is claimed that since Kansas has a right to levy a Sales or Use tax on this shipment, that therefore, the

shipment is one "into Kansas and not through Kansas", that this is what the Buck Act means. The mere right to levy or collect a tax on this shipment or on goods being transported in Interstate Commerce by a State does not change or alter the fact that the shipment is one in Interstate Commerce. None of the cases cited by Petitioners so hold.

As was said in the opinion of the Circuit Court herein, the difficulty is that Kansas has not by statute or regulation provided for the collection of liquor taxes with respect to liquor purchased on the Reservation, or purchased in States other than Kansas, and shipped in Interstate Commerce to the purchaser on the Reservation; that Kansas does not seek to collect a tax from the purchaser of this liquor. In fact, it concedes that under its laws there is no way in which the purchaser could pay the Kansas tax; that the effect of what it seeks to do by its laws and regulations is to stop entirely all interstate transportation of liquor to inhabitants of the Reservation and force them to come into Kansas and buy all liquor, to be consumed on the Reservation, from a licensed retail liquor dealer in Kansas; that it is one thing to say that Kansas may by statute and regulation promulgated thereunder provide for the collection of its liquor tax on liquor going to the Reservation or sold on its Reservation. It is quite another thing to say that it may control or regulate the purchase of liquor on the Reservation or to entirely prohibit shipment in Interstate Commerce of liquor purchased outside Kansas for delivery to the Reservation.

In Miller Bros. v. State of Maryland, 347 U. S. 340; 74 S. Ct. 535; Rehearing denied May 3, 1954, 347 U. S. 964, while speaking of power to tax a common carrier of goods in transit, the Court said:

> "We do not understand the State to contend that it could lay a use tax upon mere possession of goods in transit by a carrier or vendor upon entering the State, *nor do we see how such a tax could be consistent with the Commerce clause.*"

If Petitioners could not stop the common carrier in this case to lay a use tax on the shipment, then they certainly had no authority to stop him at all. The Buck Act only says the tax is to be collected within the Federal Area.

It never reached the Federal Area in this case.

ASSIMILATIVE CRIMES ACT.

In disposing of the argument on the above Act the Circuit Court said:

> "It is argued that the Assimilative Crimes Act makes the criminal provisions of the Kansas Liquor Control Act applicable to Military Reservations and hence the issuance of the injunction aids in the Commission of a violation of the Criminal Code of the United States. Since there is no State law prohibiting the importation in Interstate Commerce of the liquor into the Reservation, there is no violation of a Kansas Criminal Statute. At most there was a violation of the provision making it unlawful to have possession in Kansas of liquor not bearing the Kansas revenue stamps. But liquor passing across Kansas in Interstate Commerce does not come to rest in Kansas, and, therefore, the law making it unlaw-

ful to have possession in Kansas, liquor without Kansas revenue stamps attached thereto has no application to such shipments."

CONCLUSION.

To construe the Buck Act liberally is one thing—to restrict the provisions of the Commerce Clause of the United States is another thing.

HOMER DAVIS,
Attorney for Respondent.